

SAN FRANCISCO PUBLIC LIBRARY



3 1223 03273 6465



5/5



*San Francisco Public Library*

Government Information Center  
San Francisco Public Library  
100 Larkin Street, 5th Floor  
San Francisco, CA 94102

REFERENCE BOOK

*Not to be taken from the Library*







L500  
R9  
1995  
no.5

Ca  
Legislature

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 23, 1995  
2:37 P.M.

DOCUMENTS DEPT.

MAR 3 1995

SAN FRANCISCO  
PUBLIC LIBRARY





1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3  
4  
5  
6  
7  
8 HEARING

9  
10  
11  
12 STATE CAPITOL

13 ROOM 113

14 SACRAMENTO, CALIFORNIA

15  
16  
17  
18 MONDAY, JANUARY 23, 1995

19 2:37 P.M.

20  
21  
22  
23  
24  
25 Reported by:

26  
27 Evelyn J. Mizak  
28 Shorthand Reporter





APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

BRENDA PREMO, Director  
Department of Rehabilitation

KATHLEEN K. BARRETT, Legislative Advocate  
California Association of Persons with Handicaps, Inc.  
(CAPH)

SHARON GOLD, President  
National Federation of the Blind of California

YSIDRO (CID) URENA, Capitol Representative  
California Council of the Blind

ROCKY A. BURKS, President  
California Foundation for Independent Living Centers

ALICE MCGILL, Speaking on behalf of  
SHERI FARINH MUTTI, Director  
NORCAL Center for Deafness in Sacramento

PATRICK CONNELLY, former Vice Chair  
Democratic Party Disability Caucus

MIKE HUMPHREY, Executive Director  
Community Resources for Independence, Santa Rosa

GRACE M. VAZQUEZ, Employee  
Department of Rehabilitation





APPEARANCES (Continued)

JOSEPH C. CALHOUN, Member  
State Air Resources Board

JACK C. PARNELL, Member  
State Air Resources Board

DOUG E. VAGIM, Member  
State Air Resources Board

GEORGE ZENOVICH, Lobbyist  
County of Fresno





INDEXPage

Proceedings . . . . . 1

Governor's Appointees:

BRENDA PREMO, Director  
Department of Rehabilitation . . . . . 1

Background and Experience . . . . . 1

## Questions by CHAIRMAN LOCKYER re:

Impact of Budget Proposal on Department . . . . . 8

Possibility of Federal Block Grants . . . . . 8

Improvements Needed . . . . . 9

Governor's Proposed 8-10 Percent Cut  
in SSI/SSP . . . . . 11

Witnesses in Support:

KATHLEEN BARRETT, Legislative Advocate  
California Association of Persons with Handicaps . . . 13

SHARON GOLD, President  
National Federation of the Blind of California . . . . 13

YSIDRO URENA  
California Council of the Blind . . . . . 14

ROCKY BURKS, President  
California Foundation for Independent Living Centers . 17

## Statements by CHAIRMAN LOCKYER re:

Need to Include Basic Living Support in  
Advocacy for Client Group . . . . . 18

ALICE MCGILL, Speaking on Behalf of  
SHERI FARINA MUTTI, Director  
NORCAL Center on Deafness, Sacrameneto . . . . . 19

## Questions by CHAIRMAN LOCKYER re:

Departments Not Complying with  
ADA Requirements . . . . . 19

PATRICK CONNALLY, Former Vice Chair  
Democratic Party Disability Caucus . . . . . 20



INDEX (Continued)

MIKE HUMPHREY, Executive Director Community Resources for Independence, Santa Rosa Chair, State Independent Living Council . . . . .	22
<u>Witness in Opposition:</u>	
GRACE VASQUEZ, Employee Department of Rehabilitation . . . . .	24
Questions by CHAIRMAN LOCKYER re:	
Location of Current Employment . . . . .	27
Nature of Current Legal Action against Department . . . . .	29
Bureaucratic Tiers . . . . .	30
Response by MS. PREMO . . . . .	31
Questions by CHAIRMAN LOCKYER re:	
Nature of Complaints . . . . .	33
Inability of Director of Investigate Alleged Violations . . . . .	33
Continuation of Testimony by MS. VASQUEZ . . . . .	34
Response by MS. PREMO . . . . .	35
Question by SENATOR LEWIS re:	
Actions Taken in Previous Complaints . . . . .	36
Statements by CHAIRMAN LOCKYER re:	
Intent to Hold Confirmation under Submission for One Week . . . . .	37
Response by MS. PREMO . . . . .	37
Statements by CHAIRMAN LOCKYER re:	
Mission of Department of Rehabilitation . . . . .	38
Abdication of Responsibility to Clients . . . . .	38
Closing Remarks by MS. PREMO . . . . .	39





INDEX (Continued)

1			
2	JOSEPH C. CALHOUN, Member		
3	State Air Resources Board . . . . .		39
4	Background and Experience . . . . .		40
5	Questions by CHAIRMAN LOCKYER re:		
6	Toughest Issues during Tenure on Board . . . . .		42
7	Circumstances Where Board Needs to Slow Down Regulatory Timetable . . . . .		43
8	Questions by SENATOR AYALA re:		
9	How Would Mayor Riordan's Proposal Improve Pollution Problems in Los Angeles . . . . .		44
10	Position on the Mayor's Proposal . . . . .		44
11	Familiarity with Farm Bureau's Study of Damage to Crops from Ozone . . . . .		45
12	State Implementation Plan . . . . .		46
13	CARB's Approval of Local District Plans . . . . .		47
14	Questions by SENATOR PETRIS re:		
15	Fragmentation of Regulatory Agencies . . . . .		47
16	Date of Adoption of State Implementation Plan . . . . .		48
17	Impression of State Implementation Plan . . . . .		49
18	Questions by CHAIRMAN LOCKYER re:		
19	Possible Weaknesses or Defects in SIP . . . . .		49
20	How to Pay for Retiring 75,000 High Polluting Vehicles . . . . .		50
21	Status of Dispute relating to Renewable Resources and State Fuel Policies . . . . .		51
22	Questions by SENATOR PETRIS re:		
23	Pending Lawsuit against Federal EPA filed by Oil Refiners . . . . .		53
24	Questions by CHAIRMAN LOCKYER re:		
25	Appropriateness of Fuel Neutrality Policy . . . . .		54
26			
27			
28			





INDEX (Continued)

## Questions by SENATOR PETRIS re:

Will SIP Meet Federal Compliance Standards for Clean Air . . . . .	55
Inclusion of Electric Vehicles in SIP . . . . .	56
Active Opposition to Electric Vehicle Mandate . . . . .	57
Need for ARB to Work with Department of Pesticide Regulation to Control Volatile Organic Coumpounds . . . . .	58
Strength of State Implementation Plan . . . . .	59
Problem of Most Hazardous Air Pollution Areas in Low Income and Minority Residential Districts . . . . .	60

## Questions by SENATOR LEWIS re:

Characterization of Air Quality in South Coast Basin in Last Ten Years . . . . .	62
Cause of Diminution of Smog Problem in South Coast Basin . . . . .	62
Motion to Confirm . . . . .	63
Committee Action . . . . .	64
JACK C. PARNELL, Member State Air Resources Board . . . . .	64
Opening Statement . . . . .	64

## Questions by SENATOR PETRIS re:

Partnership with GEORGE SOARES . . . . .	65
Possibility of Conflict of Interest . . . . .	66
Need for Tough Statutes to Regulate Pesticides . . . . .	67

## Questions by SENATOR AYALA re:

Position on Mayor Riordan's Proposal . . . . .	69
ARB's Action on Ozone Damage to Crops . . . . .	69





INDEX (Continued)

1			
2	Responsibility for Controlling Automobile		
3	Emissions . . . . .	70	
4	Motion to Confirm . . . . .	71	
5	Committee Action . . . . .	71	
6	DOUG E. VAGIM, Member		
7	State Air Resources Board . . . . .	72	
8	Background and Experience . . . . .	72	
9	Questions by SENATOR PETRIS re:		
10	ARB Not Carrying out Mandate to Reduce		
11	Pollution in Each District by 5 Percent . . . . .	75	
12	Elimination of 75,000 in SIP . . . . .	77	
13	Technological Answers . . . . .	78	
14	Recalling and Buying Old Cars . . . . .	79	
15	Impact of Removal of Older Cars on Air		
16	Pollution in Stae . . . . .	82	
17	Federal Approval of California's SIP . . . . .	83	
18	Some People Prefer Federal Plan . . . . .	84	
19	Questions by SENATOR LEWIS re:		
20	Success of Unical Oil Scrap Program in		
21	South Coast District . . . . .	85	
22	Mandatory Ride Sharing Program, Reg. 15 . . . . .	86	
23	Programs that Work Versus Mandates . . . . .	88	
24	Questions by CHAIRMAN LOCKYER re:		
25	Principle Defects in FIP that Were Corrected		
26	in SIP . . . . .	89	
27	Statements by SENATOR PETRIS re:		
28	Used of No Drive Days to Boost Use of		
	Public Transit . . . . .	90	
	Questions by CHAIRMAN LOCKYER re:		
	Port Impacts with SIP Mandates . . . . .	92	





INDEX (Continued)Witness in Support:

GEORGE ZENOVICH, Lobbyist	
County of Fresno . . . . .	93
Motion to Confirm . . . . .	93
Committee Action . . . . .	94
Termination of Proceedings . . . . .	94
Certificate of Reporter . . . . .	95





## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: I think probably it would accommodate the most people present if we were to take up Item Number Three, the Director of the Department of Rehabilitation. So, let's start with that.

Brenda Premo, if you'll take the chair. Good afternoon.

MS. PREMO: Good afternoon.

CHAIRMAN LOCKYER: Did you want to begin with any kind of prepared statement?

MS. PREMO: I'd like to.

CHAIRMAN LOCKYER: All right, please.

MS. PREMO: Thank you, Mr. Chairman and Members of the Rules Committee.

I appreciate the opportunity to appear before you. I am very honored to have been chosen by Governor Wilson to succeed my friend and colleague, Bill Tainer.

In the next few minutes, I'd like to tell you why I'm qualified to be Director of California's Department of Rehabilitation.

I have a diverse background which prepares me well for this position. I come to the directorship with the unique experience of being a consumer of, a contractor with, and an administrator in the Department of Rehabilitation. I have the technical knowledge, creativity, and administrative experience necessary to run an organization of this size and scope.

But more importantly, I have the personal sensitivity



1 and deep-rooted commitment to the consumers of the Department's  
2 programs and services.

3 I'm a person with disability, and as you can see, I'm  
4 a person with Albinism, and I have a visual impairment. In  
5 fact, you could read this speech from where I'm sitting.

6 I was a consumer of the Department of Rehabilitation  
7 services. I received counseling and guidance and assistance in  
8 obtaining my Bachelor's degree from California State University  
9 at Long Beach.

10 I know the value of a good vocational rehabilitation  
11 counselor. I know the difference technology and education can  
12 play in the lives of those of us with disabilities.

13 I know what it's like to be told you can't do it. I  
14 know the frustration and anger, and I know that you can go ahead  
15 and do it, if for no other reason than to prove them wrong.

16 I am a former contractor and service provider with  
17 the Department of Rehab. I ran a community-based not for profit  
18 organization which provided independent living services to  
19 people with disabilities in Orange County.

20 For 14 years, I was the Director of one of the  
21 state's largest independent living centers, known as the Dayle  
22 McIntosh Center for the Disabled. I know what it's like to run  
23 a broad array of community services on a shoe-string budget. I  
24 know what it's like to scrimp and save to keep a small, growing  
25 nonprofit alive. I know what it's like to voluntarily hold your  
26 own check so your staff can be paid. I have managed both sides  
27 of the balance sheet.

28 We built Dayle McIntosh from its inception to more





1 than a \$1.2 million center before I left. While administering  
2 the nonprofit agency, I earned my Master's in Business  
3 Administration from Pepperdine University, and I have served  
4 three and one-half years as a top level administrator with the  
5 Department of Rehabilitation, nearly a year of that as Director.

6 During that time, I have learned what we in the  
7 community used to call "the state way." I know contracting  
8 rules and regulations. I have learned the state's civil service  
9 system, and I've learned the joys of working with our control  
10 agencies.

11 As you can tell --

12 CHAIRMAN LOCKYER: Which is your favorite one?

13 [Laughter.]

14 MS. PREMO: I think I'll take the Fifth.

15 As you can tell, I come to this position with a solid  
16 understanding of the programs and services of the Department of  
17 Rehabilitation. As a disabled community leader, I arrived with  
18 an extensive and supportive network of consumers, service  
19 providers, and rehabilitation professionals.

20 From policy to legislation, from program development  
21 to service delivery, I've been there and done that.

22 To me, what overrides all of these qualifications,  
23 however, is that I bring to the Department a deep philosophical  
24 commitment to our consumers, as well as the principles of  
25 independent living.

26 I have been an advocate for people with disabilities  
27 for as long as I can remember. I don't intend to stop just  
28 because I've joined the bureaucracy.





1 I served on the National Council on Disability as an  
2 appointee of President Reagan. While on the National Council, I  
3 assisted in the development, draft legislation which became the  
4 Americans with Disabilities Act.

5 I see the Department of Rehabilitation as a critical  
6 link between Californians with disabilities and state  
7 government. The Department of Rehabilitation is a major  
8 resource to assist in seeing the promises of the ADA come true.

9 The mission of the Department of Rehabilitation is to  
10 assist Californians with disabilities, particularly those with  
11 the most severe disabilities, in obtaining and retaining  
12 meaningful employment and independent living in their local  
13 communities. I believe it is my responsibility as Director to  
14 ensure the disability policy in California reflects these  
15 values.

16 The National Organization on Disability, in  
17 conjunction with Lou Harris and Associates, recently issued the  
18 results of the most comprehensive survey of Californians with  
19 disabilities. I would like to share with you just a few of the  
20 most significant findings. They help to highlight the  
21 importance of what we at the Department intend to do in the next  
22 four years.

23 Now, as I give you these statistics, keep in mind,  
24 one in five of us has a disability. There are 49 million people  
25 with disabilities in this country. There are some 5.2 million  
26 Californians with disabilities. Any one of us can join the  
27 disabled community at any time. We're not just talking about  
28 strangers; we're talking about brothers and sisters, spouses,



1 friends, even Senators and Assemblymembers. And as the  
2 population ages, our numbers will increase.

3 According to the Harris survey, there is continuing,  
4 and in my view, a disgraceful disparity in the employment rate  
5 of those with and without disabilities. Two-thirds of working  
6 age people with disabilities are not in the workforce.  
7 Unfortunately, in California approximately 70 percent of those  
8 with disabilities are not in the workforce. Of those who are  
9 working, only two-thirds have full-time work.

10 Seventy-five percent of unemployed people with  
11 disabilities of working age say they want to work. As a direct  
12 result of their lack of employment, the poverty rate among  
13 people with disabilities is twice, double, that of the national  
14 average.

15 Forty percent of adults with disabilities live in  
16 households with earnings of \$15,000 or less. This is compared  
17 to 18 percent of adults without disabilities. Just 10 percent  
18 of people with disabilities, as opposed to 22 percent of those  
19 without disabilities have household incomes of 50,000 or more.

20 One in four adults with disabilities derive all --  
21 now, that's all -- of their income from benefit programs like  
22 SSI, SSDI, and other insurance programs. And people with  
23 disabilities have less education; 25 percent of people with  
24 disabilities do not have a high school diploma.

25 Now, I draw your attention to this survey because it  
26 underscores the importance of the work we will do at the  
27 Department of Rehabilitation.

28 CHAIRMAN LOCKYER: Was that number 25 percent?





1 MS. PREMO: Twenty-five percent, one-fourth.

2 Since joining the Department in 1991, I have helped  
3 shape the vision of an organization which focuses on increasing  
4 employment opportunities and economic self-sufficiency of our  
5 consumers so they can lead independent, productive, tax paying  
6 lives. Through these efforts, it is my hope that we make  
7 strides towards closing that unemployment gap.

8 In 1992, Congress substantially rewrote the federal  
9 law which governs the programs and services of the Department of  
10 Rehabilitation. The 1992 amendments to the Rehabilitation Act  
11 have triggered significant changes in how the Department serves  
12 its constituencies. We have new themes of consumer empowerment,  
13 consumer choice and direction, and career development.  
14 Successful implementation of the new law is the highest in my  
15 priorities.

16 The Department of Rehabilitation has three programs.  
17 The first program is the Vocational Rehabilitation Program, the  
18 one that you hear the most about. We estimate that about  
19 approximately 105,000 consumers will receive vocational  
20 rehabilitation services in this fiscal year.

21 The second major program in the Department is the  
22 Habilitation Services Program. We expect to serve nearly 15,000  
23 individuals with developmental disabilities in this program.

24 And the third and much smaller program is the  
25 Independent Living Program. Approximately 28,000 individuals  
26 are expected to be served by the 28 independent living centers  
27 this year.

28 I am acutely aware of the opportunities and



1 challenges facing the Department of Rehabilitation and its  
2 consumers in the next four years. I'm committed to providing  
3 quality services to our constituencies.

4 As I mentioned earlier, I helped draft the first  
5 version of the Americans with Disabilities Act. The ADA  
6 establishes a comprehensive national disability policy which  
7 promotes economic and social self-sufficiency, independence and  
8 self-determination, and inclusion and integration of people with  
9 disabilities into all aspects of daily life. Both the Governor  
10 and I want to make full and proper implementation of the ADA in  
11 this state a priority.

12 The Department of Rehabilitation is in a perfect  
13 position to assist business and government in understanding the  
14 ADA and how we can make it work for all of us.

15 In conclusion, let me point out that the 1994 survey  
16 also shows that people with disabilities in general are  
17 optimistic about the future. More than half of work-aged  
18 Americans with disabilities say they believe that their quality  
19 of life will improve over the next four years. They expect job  
20 opportunities, education, and access to community institutions  
21 and activities to improve. I don't intend to let them down.

22 I expect to have the Department play a significant  
23 role in helping to achieve these goals. As Director of the  
24 Department of Rehab, I intend to work with you, other policy  
25 makers, employers and the public to understand, we have to look  
26 at the abilities of people with disabilities. We must welcome  
27 people with disabilities into the mainstream of community life,  
28 and we must invest in the accommodations and technological





1 changes needed to assure full participation of all of us in the  
2 economic infrastructure of society.

3 I believe in an independent living philosophy in  
4 which we choose to reach our fullest potential so that we, too,  
5 can live the American dream. And to me, those choices should be  
6 based on all aspects of who we are, not just our disabilities.

7 Thank you, Mr. Chairman, and I would be open to any  
8 questions that the Committee might have for me.

9 CHAIRMAN LOCKYER: Thank you very much. A nice  
10 statement.

11 How does the budget proposal impact the Department in  
12 its services?

13 MS. PREMO: This budget year, we have remained  
14 essentially the same. We have a commitment from the budget that  
15 is essentially the same as it was last year.

16 As you probably know, the Department receives  
17 substantially federal funding for our Title I program, which is  
18 the vocational rehab program. For every \$3.7 dollars we receive  
19 -- or for every one dollar we get in state dollars, we get 3.7  
20 in federal up to a cap. So, it is good business logic to keep  
21 our agency funded because of the leverage of the dollars.

22 CHAIRMAN LOCKYER: Are you watching the federal  
23 discussion of possibly block granting funding sources, I think  
24 of this sort. What you heard about that?

25 MS. PREMO: Yes, we are watching it. We're watching  
26 it on the general vocational side as well as the implications it  
27 could have to the Department.

28 So far, there hasn't been a specific proposal that we



1 can respond to.

2 We believe that all services that are provided to the  
3 general public should be accessible to those members of the  
4 general public who happen to be disabled.

5 We also understand that we offer a service, not only  
6 to the disabled person, but to the employer, to the state  
7 agency, to the public agency, that assists them to understand  
8 and to get what they need to provide good services. So, we see  
9 the role of the Department changing as the environment changes,  
10 but many of the things we do are specialized and can assist both  
11 our consumers and our other partners in providing good quality  
12 service.

13 CHAIRMAN LOCKYER: Assuming that the current services  
14 aren't perfect, since no human activity is, what would you wish  
15 to improve if you can?

16 MS. PREMO: That's a good question, and having been  
17 in the community, and then moving into contracting, and finally  
18 into the Department, those all look like walking through Alice  
19 in Wonderland's mirror. When you walk through, it looks  
20 different, but it's the same thing.

21 I think basically within the Department there are  
22 three things that I want to work on specifically. The first is  
23 helping our staff and providing them the training that they need  
24 in understanding the new amendments to the Rehab Act,  
25 understanding the importance of technology.

26 Technology in this century is going to help all of  
27 us, irrespective of disability. But assisted technology is  
28 going to make it possible for people with disabilities to





1 overcome impediments and do tasks that we would have thought  
2 impossible five years ago. Such as persons who are deaf using  
3 the relay service, closed captioning, the availability of  
4 speech.

5 My speech is a prime example of that. The print on  
6 this was designed by a computer, and there was nothing special  
7 about that computer. Just pushed a button, and there it was.

8 That type of technology for our consumers will allow  
9 them to reach their goals in employment, and allow employers to  
10 hire them as the most qualified person, without considering the  
11 impediments or limitations they confront.

12 The second thing I want to do is to increase the  
13 involvement of people with disabilities in the rehab process.  
14 Sometimes I read, and it's very close on my nose, the newspaper.  
15 And somethings that disturb me about what I read is even the  
16 newspaper writers, who are very careful and considerate of  
17 people with disabilities, want to generalize that because you  
18 have a disability, the only way you can become productive is  
19 somehow to become undisable.

20 What we want to do, and that somehow you can't --  
21 that your intellect is in your hands, or your legs, or your  
22 ears, or your eyes.

23 What we want to do is get across the idea that your  
24 ability to perform is based on the total assets and liabilities  
25 that you have, like every other person. And that with certain  
26 accommodation, you will be able to perform those duties or that  
27 job. As part of that, you need to be involved as a partner, an  
28 equal partner, in developing your rehabilitation plan.



1           And third, for me for the Department, I want to be  
2   able to reach out to service those populations in rural areas  
3   and the inner city, where we have unserved and underserved  
4   populations. And I want to be able to recruit from those areas  
5   so that we can use people from the community to assist us in  
6   reaching out to the people we need to get to.

7           CHAIRMAN LOCKYER: I notice in your comment that a  
8   quarter of the effected community have their income maintained  
9   solely through programs like SSI.

10          Have you had an opportunity to comment on the  
11   proposed budget cut of 8 percent for an individual, and 10  
12   percent for a couple in SSI/SSP support?

13          MS. PREMO: I haven't seen the actual proposal yet.  
14   I do have the big fat blue book on my desk, but I haven't gotten  
15   through it all.

16          I do have to say in general that when I was on -- I  
17   was on SSI for three years, and my whole goal was to be off of  
18   it. At that time, there were many disincentives, because we  
19   assumed that people with disabilities would not work, and we  
20   built a system to discourage them from working.

21          My hope is that we'll be able, and have been in the  
22   last six to seven years, eliminating many of those disincentives  
23   and rewarding people for wanting to work. And many people with  
24   disabilities are very frustrated on an emotional level because  
25   people discount them.

26          I hope that our goal will be not so much to worry  
27   about the dollars in the program, but how the program is  
28   designed to move people with rewards from a subsistence -- even





1 if you added that 10 percent back, it will be a subsistence  
2 program -- to a situation where they are empowered to be  
3 employed.

4 My goal, I believe, or my responsibility as Director,  
5 and we have a very good now working relationship with Social  
6 Security, is to move people from those roles into competitive  
7 employment, so they don't have to contend with all of the issues  
8 that goes with being on Social Security, and the money is just  
9 one of them.

10 Having been on the system, it's de-humanizing. It  
11 controls you. It invades your personal life, and people assume,  
12 assume, you will be capable of doing nothing.

13 Therefore, our goal is to get folks out of that, and  
14 I see myself as Director in that position, but I haven't looked  
15 at the specific as yet proposal.

16 CHAIRMAN LOCKYER: Well, the specific proposal is to  
17 cut it 8 percent for an individual. And I would suggest that  
18 it's a fundamental enough issue that a Director whose  
19 responsibilities include being an advocate for these populations  
20 have knowledge and an opinion about the matter before I'm ready  
21 to vote.

22 Maybe before February 9th, we'll be able to talk  
23 about that.

24 Are there questions from other Members of the  
25 Committee?

26 Who wants to comment in the audience?

27 MS. BARRETT: My name is Kathleen Barrett. I'm the  
28 legislative advocate for the California Association of Persons



1 with Handicaps. I believe you have a letter of our supporting  
2 Brenda's nomination.

3 We feel Brenda is an excellent advocate for our  
4 people, and we would like to see her continue in the next four  
5 years to be able to put into full effect the initiative that she  
6 has undertaken.

7 I appreciate the Chair's comments about the  
8 supplemental security payment reduction, but feel that it would  
9 be very hard for the Director at this time to respond to another  
10 control agency. That's really difficult, but I'm sure she will  
11 in her own way, and she has a very, very forceful way.

12 I thank you.

13 CHAIRMAN LOCKYER: Thank you, Kathleen.

14 Next please, there's a mike in front of you.

15 MS. GOLD: My name is Sharon Gold. I'm the President  
16 of the National Federation of the Blind of California.

17 The National Federation of the Blind of California  
18 has been pleased to work with Brenda Premo over the past several  
19 years that she's been within the Department. We have always  
20 found the Department somewhat less than helpful in the  
21 rehabilitation process of blind people.

22 Probably of all the disabled people, blind people  
23 have the hardest time getting work and the hardest time getting  
24 rehabilitated. During this past time that Brenda has been in  
25 the Department, we are finding that the Department is becoming  
26 much more sensitive to the assistance of blind people, and that  
27 the rehabilitation process is getting easier for blind people.  
28 We appreciate that.





1           We support the opportunity for blind people, and if  
2 Brenda's going to bring that to us, then we're for it. So, we  
3 would like to support her nomination.

4           In such, the feeling that we have of it is that we,  
5 as an organization, gave her our highest award at our last  
6 convention in November, the Kenneth Gurnigan Award, and we do  
7 that for the performance that we have seen, but also for what we  
8 expect in the way of opportunities for blind people in  
9 California.

10          Thank you.

11          CHAIRMAN LOCKYER: Thank you very much.

12          Yes, sir.

13          MR. URENA: Thank you, Mr. Chairman. I am Ysidro  
14 Urena from the California Council of the Blind, the largest  
15 organization of its type in the country.

16          We're happy to support Brenda because she has shown  
17 us already that she is willing to work with us, that she is  
18 willing to make progress.

19          She has, for instance, very recently appointed a  
20 blind individual to direct the Department -- I'm sorry, the  
21 Business Enterprise Program. He is an individual who's been a  
22 vendor, and hopefully he will straighten that mess out that we  
23 had for years. And we believe that he will, and we believe that  
24 he will work with us, and we will also support him in that  
25 appointment she made.

26          I think that what I'd like to say is that Director  
27 Premo is confronting a real problem. The real problem is  
28 history. That history has been very bad, particularly for the



1 blind, in the Department of Rehab. As a matter of fact, in  
2 1963, we opposed being sent to the Department of Rehabilitation.  
3 We've had many confrontations since that time.

4 Those things seem to be gradually, at least in the  
5 last nine months or so, disappearing to some degree. But, you  
6 know, there are people who still think of the years, well, 20-30  
7 years ago, and they think of you as Legislators of 20-30 years  
8 ago. And so, they're unhappy with you, they're unhappy with  
9 Brenda, but that's only because they don't realize the  
10 advancements that have really been made.

11 And I apologize for that, but I don't know what I can  
12 do and you can do about it except keeping improving our  
13 programs.

14 The only thing that I would recommend to Brenda at  
15 this time, the ADA, it's a good program. The American Council  
16 of the Blind supported that program, not at the eleventh hour,  
17 but they supported it from the very beginning.

18 In addition to that, let me say we supported it  
19 because we believe in helping disabilities. The California  
20 Council of the Blind, for instance, instigated the regulations  
21 which brought aid to the disabled back in the late '50s or early  
22 '60s. I don't recall; I was around, but I didn't know much  
23 about it at that time.

24 Again, the thing that I would recommend to Brenda is  
25 because the ADA doesn't really deal with as much of the problems  
26 of the blind as it should, for example, in the area of  
27 paratransit. The first ones to be taken off paratransit when it  
28 comes to the necessity of money are blind people. And some of



1 the worst people to get around because of their blindness,  
2 because they're newly blind, may need the most help, probably,  
3 than anyone else.

4 There are people who are older who cannot walk five  
5 or six blocks to catch a bus, and who cannot be let off the bus  
6 to another five or six blocks to their destination because there  
7 are no buses in those places.

8 So, I think if the Director is willing to work to  
9 alleviate these problems, is willing to work with us, as I said,  
10 she's already made an appointment which will have a good effect,  
11 I think, and if she continues to work with us and bring the  
12 blind program together under one division so that we can improve  
13 and have specialists working for blind people, the way other  
14 disabilities do, I think that we can improve what is now the  
15 employable blind. Seventy percent are not employed. I think we  
16 can improve on that, but I think we can only do it under the new  
17 Director's direction, if she was willing to help us, and I'm  
18 sure she is. And we're willing to do everything we can to put  
19 the blind program under the same roof so that the rehabilitation  
20 counselor, the counselor teachers, the business enterprise  
21 program, the readers' fund, is under one roof, under one  
22 direction, and in the Department of Rehab, with its own Deputy  
23 Director.

24 Thank you, Mr. Chairman.

25 CHAIRMAN LOCKYER: Thank you very much, thank you  
26 both.

27 Are there others that might wish to comment? The  
28 only thing I'd ask is to avoid being repetitive.





1 MR. BURKS: Mr. Chairman, my name is Rocky Burks, and  
2 I am the President of the California Foundation for Independent  
3 Living Centers.

4 And I would like to say that we most eagerly and  
5 enthusiastically support the recommendations from the Governor  
6 to appoint Brenda Premo as the Director.

7 You bring up a very good point on the SSI  
8 consideration of the Department of Finance in cutting 8 percent  
9 across the board. I would hope that I think members of this  
10 distinguished committee would recognize that it is not  
11 necessarily the role of the Department of Rehabilitation to  
12 determine the cash benefit that exists under the SSI program.

13 However, it is the role of the State Department of  
14 Social Services. I think that to confuse the role of the  
15 Department of Rehabilitation and their overview -- I think what  
16 Brenda was saying was that she probably did not have an adequate  
17 opportunity to understand the magnitude of the Department of  
18 Social Services cuts that are being projected through the  
19 Governor's January proposal, but that she was concentrating  
20 pretty much on her efforts with the Department of  
21 Rehabilitation's functional role.

22 That's why California Foundation for Independent  
23 Living Centers can support her, because she is a knowledgeable  
24 person in the respective areas of budget, on both sides of the  
25 budget aisle. And I think that it is the beef that we would  
26 have with the Department of Social Services and the Department  
27 of Finance and the Governor of the state who would recommend the  
28 draconian cut of 8 percent.



1 I think Brenda has done an admirable job in the  
2 Department of Rehabilitation in rejuvenating the enthusiasm and  
3 the desire and the motivation of Department staff that I haven't  
4 seen existing in over 12 years. I think that that says  
5 something about the management skill and ability that Brenda  
6 presents to the staff of state employees.

7 It is a joy, it is not a hindrance, to go into the  
8 Department and find people are having every desire to empower  
9 people with disabilities to become tax payers as opposed to tax  
10 users, to become contributors of the society as opposed to being  
11 the perception that they are users in society.

12 It is for those reasons that we can look at Brenda  
13 and say eagerly that she can demonstrate the leadership and  
14 skill and ability that's necessary to transform this Department.

15 Thank you.

16 CHAIRMAN LOCKYER: Thank you very much.

17 I guess maybe I should restate my point, which is,  
18 part of our review involves an assessment of a person's ability  
19 to manage the large bureaucracy involved, and as has been just  
20 indicated, to lift and improve morale and purposefulness within  
21 the bureaucracy.

22 I guess I'm a little worried that when one of the  
23 stated missions of the Department is advocacy for the client  
24 group, to not have either knowledge or opinion about an 8 or 10  
25 percent cut in their basic support strikes me as a gap in  
26 performance that is a serious one. So, we'll get back to that  
27 later.

28 Let me continue to ask anyone that wishes to comment





1 to do so.

2 MS. MCGILL: Hello. My name is Alice McGill. And  
3 I'm here on behalf of Sheri Farinha Mutti, who is the Director  
4 of NORCAL Center on Deafness here in Sacramento.

5 And our Director has worked with Brenda Premo for  
6 over a year now, and in the past, and she has noticed  
7 improvement in providing services to deaf and hard of hearing  
8 people within the Department of Rehabilitation.

9 Brenda Premo recognizes the importance of working  
10 with the community organizations and utilizing resources of the  
11 community organizations. And our Director has also noticed that  
12 Brenda's commitment to having her Department's role in the  
13 Americans with Disabilities Act in providing services.

14 Unfortunately, another state department has not  
15 complied with ADA rules and regulations as employer and also as  
16 a service provider.

17 We trust that under Brenda's leadership, her  
18 continued leadership, that this issue will be confronted, and we  
19 expect that Brenda will continue to work with the community  
20 organizations to improve access for deaf and hard of hearing  
21 individuals, access to services and employment opportunities.

22 Northern California Center on Deafness supports the  
23 selection of Brenda Premo for this position.

24 CHAIRMAN LOCKYER: I wanted to ask, what was the  
25 department that you were concerned about their ADA compliance  
26 that had been inadequate?

27 MS. MCGILL: You want me to identify the department?

28 CHAIRMAN LOCKYER: Yes, that's why I asked.



1 MS. MCGILL: Okay. We have worked with several deaf  
2 and hard of hearing individuals, mostly as employee of the state  
3 departments. It's individual cases, so I feel that I can't  
4 really express to you what the situation is because I have an  
5 attorney-client relationship with these people.

6 But I can tell you that there are some departments  
7 that are very good. They are complying with the ADA, but others  
8 are not. Apparently there is not standardization in complying  
9 with the law.

10 CHAIRMAN LOCKYER: What I'm trying to learn from you  
11 is which ones are doing a particularly good or particularly bad  
12 job, in your opinion?

13 MS. MCGILL: Okay, all right.

14 The Department of Rehab, of course, is the model.  
15 That is the model state department.

16 PERS -- I can't remember what the full name of it is.

17 CHAIRMAN LOCKYER: We know.

18 MS. MCGILL: Okay, they're very good also.

19 The Department of Social Services, not good.

20 CHAIRMAN LOCKYER: They have some work to do.

21 MS. MCGILL: Yes, definitely, and also the Department  
22 of Health Services has work to do.

23 There are a few others. I can't remember them off  
24 the top of my head right now.

25 CHAIRMAN LOCKYER: That's a good start, thank you.

26 Next gentleman.

27 MR. CONNALLY: My name is Patrick Connally. I'm a  
28 former Vice Chair of the Democratic Party Disability Caucus, and



1 I'm currently a member of the Sixth Assembly District Committee,  
2 and also Co-chair of Marin County Democrats with Disabilities  
3 and helped found several Democratic clubs.

4 I'm here speaking for myself today, and I would say  
5 if we have to have a Republican as Director of the Department, I  
6 would definitely support this woman being Director.

7 I would can the guy from Medi-Cal, and if you'd like  
8 some instances of ADA violations, I would be happy to give them  
9 to you, because I think it's a disgrace that oxygen and  
10 wheelchairs are the biggest things denied.

11 I think it's important to have a strong Director  
12 that's going to support the Americans with Disabilities Act and  
13 the intent that it was found for, which is to get people to work  
14 and to end this horrible, expensive hole we're pouring money  
15 down, called the Charity Rehabilitation Model, and I think we  
16 have a chance to do that. And I think we're going to need  
17 bipartisan support to protect our civil rights protections and  
18 to be able to work.

19 I could not work if it weren't for the Americans with  
20 Disabilities Act ensuring that public transportation was  
21 accessible. And I'm a taxpayer today, and thanks in part to the  
22 work of Brenda Premo and other people getting that law passed.  
23 It's a law that's everybody's law. It protects everybody, and I  
24 think that's going to be a crucial legislative issue.

25 And I do agree with you that we do need that 8  
26 percent restored, because it's ridiculous to expect anybody to  
27 live on \$600 a month.

28 CHAIRMAN LOCKYER: Thank you, sir.





1           Anyone else?

2           I know there is opposition present. Perhaps it would  
3 be -- oh, another gentleman.

4           MR. HUMPHREY: Don't worry, Brenda. The opposition's  
5 not from me.

6           My name is Mike Humphrey. I am the Executive  
7 Director of Community Resources for Independence, which is an  
8 independent living center in Santa Rosa. I'm also the Chair of  
9 the State Independent Living Council and work very closely with  
10 Brenda.

11           What does Brenda bring to the Department, I think, is  
12 really important here. And I think what it is, is she brings an  
13 atmosphere of cooperation, respect, and dignity toward people  
14 with disabilities, values the input of people with disabilities.

15           Under the former administration, Governor Deukmejian,  
16 I think that there was a very different atmosphere, one of  
17 trying to shut down the independent living centers as one  
18 example. Senator Ayala probably remembers the independent  
19 living centers out on the east steps of the Capitol, protesting.  
20 I actually remember Senator out and speaking before us and  
21 giving his support to the independent living centers at that  
22 time. And, you know, there were -- at that time, there were  
23 some real threats for people with disabilities that were  
24 occurring.

25           Since Brenda's come to the Department, there's been  
26 the atmosphere of wanting to work with the disability community,  
27 wanting to resolve the issues and matters that confront the  
28 disability community. And provided us a door to the



1 administration, so to speak, one that allows us to more  
2 accurately reflect our concerns, and be able to present our  
3 issues and problems to the administration.

4 She's been very aggressive in trying to get new  
5 federal dollars into the State of California. The State of  
6 California has a new assisted technology grant that was funded  
7 by the Rehabilitation Services Administration, and Brenda's been  
8 very active and has formed a council of -- advisory council that  
9 advises her on issues around assisted technology for people with  
10 disabilities.

11 She's been active about appointing the -- or getting  
12 the Governor to appoint the Rehabilitation Advisory Council, the  
13 State Independent Living Council. All of these councils are now  
14 in operation and advising the Department on some real critical  
15 issues facing the Department.

16 It's too bad that some of these other departments are  
17 not set up in such a way, and hopefully, they'll use the  
18 Department as an example of how you can work with your  
19 communities to assist you in creating the kind of change that  
20 needs to occur.

21 I think another thing that Brenda brings is, again,  
22 the commitment to the movement. Since she's been appointed last  
23 year, I think, she's traveled up and down the state many, many  
24 times, visiting, I think, virtually all of the districts within  
25 the Department of Rehabilitation, holding Town Hall meetings,  
26 really getting out there to the community and letting them tell  
27 her what it is that are their issues and concerns that will help  
28 shape the Department and make the Department a better place for





1 people with disabilities.

2 That's what it's becoming, is really a better place  
3 with disabilities. And I really encourage you to support her  
4 nomination.

5 Just briefly in response to the SSI issue is that I  
6 think that Brenda is very concerned about an 8 percent proposal.  
7 In my mind, I know Brenda --

8 CHAIRMAN LOCKYER: Mr. Humphrey, she can speak for  
9 herself on the issue.

10 MR. HUMPHREY: Okay, I'm sorry.

11 Certainly, I think that we in the disability  
12 community will make sure that the Governor and the  
13 administration hear about our concerns around the 8 percent  
14 proposal, and we'll do everything we can to make sure that  
15 people with disabilities have an opportunity to have a minimal  
16 subsistence level to live on.

17 I thank the Committee, and again, encourage your  
18 endorsement for the Governor's nomination here. Thanks.

19 CHAIRMAN LOCKYER: Thank you, sir.

20 Is there opposition present? Please come up.

21 MS. VASQUEZ: Mr. Chairman and Senators, I'm here as  
22 a private citizen and also as an employee of the Department of  
23 Rehabilitation.

24 As you can see, I have -- my voice kind of goes away  
25 since I've had surgery.

26 CHAIRMAN LOCKYER: You should identify yourself.

27 MS. VASQUEZ: My name is Grace Vasquez, and I am the  
28 training officer for the Americans with Disabilities Act



1 Implementation Section.

2 I am here in opposition of Ms. Premo's confirmation  
3 to Director of the Department of Rehabilitation. On her  
4 personal point, I don't have any rebuttals to her as a person.

5 But in terms of her leadership, her commitment to  
6 consumers as she stated, her knowledge of the civil service  
7 system, her promises set forth in the ADA, her assistance in the  
8 drafting of the Americans with Disabilities Act are all areas in  
9 which she has not fulfilled her commitment to the consumers.  
10 And also, her leadership has been lacking in those areas.

11 I've currently filed a federal suit against the  
12 Department of Rehabilitation for violation of the Federal  
13 Information Practices Act. The Department was notified not  
14 only prior to my lawsuit that my supervisor had made 15 copies  
15 of my medical records, and had plastered them all over the  
16 Department.

17 Subsequent to that, the Department obtained copies of  
18 a lawsuit that I had won in 1985 against the Department of  
19 Employment Development. That lawsuit stated that the agreement  
20 was that all documents pursuant to that agreement would be  
21 expunged and destroyed. The Department of Rehabilitation  
22 obtained copies of that also and proceeded to destroy my career.

23 CHAIRMAN LOCKYER: When did that occur?

24 MS. VASQUEZ: June 10th of '94.

25 In June 10th of '94, I was under tremendous stress.  
26 Prior to that, in February of '94, I was forced into submitting  
27 a request for transfer to another program because of the stress  
28 level and the fact that I have lupus.



1           During that period, my supervisor tried to corrose  
2 [sic] me into signing a release of information, a blank release.  
3 I notified the proper authorities, and then I went to CSEA. I  
4 went in through the departmental process by contacting the labor  
5 relations officer, the EEO office, and the civil rights officer.  
6 And I was told that I basically was barking up the wrong tree.

7           CSEA then informed my supervisor in writing that he  
8 was to stop corrosing [sic], you know, and retaliating me  
9 because I would not submit or agree to signing a blank release.

10           On May of '94, the Deputy Director, Curtis Richard,  
11 informed me that he did not have substantial information, and  
12 there was a question as to whether or not I had lupus and a  
13 degenerative disk disease. He basically told me in his  
14 memorandum: get back to work.

15           Four days later, I found copies of my medical records  
16 that I submitted to substantiate that I had lupus, and that the  
17 stress level was aggravating it, and that I needed to be  
18 transferred.

19           A couple days later after that, I was attacked in my  
20 office by the secretary. I went to the labor relations officer  
21 and informed him that I had brought that to my supervisor's  
22 attention, and that my supervisor basically told me at 1:00  
23 o'clock on a Friday afternoon that he would take care of it on  
24 Monday, after everyone has cooled off.

25           On the following week, I was extremely distressed  
26 that I had found my medical records in the recycle bin in the  
27 main Xerox room, there for everyone to inspect and review.

28           I then went and tried to look for the civil rights





1 officer, who was not present. I went to the labor relations  
2 officer, who would not even talk to me. I went to the personnel  
3 officer, and she basically told me that she represented  
4 management.

5 I then went up to the legal office and was told that  
6 I needed to speak to the legal counsel. I met with the legal  
7 counsel and Mr. Curtis Richard. Mr. Curtis Richard informed me  
8 that he did not know anything about it, yet I had seen  
9 memorandums that he had sent to my supervisor.

10 What I'm getting to is that as a Director, she's  
11 accountable and responsible for the actions of her staff. She  
12 has refused to acknowledge that there has been an enormous  
13 amount of inappropriate behavior. And as you know, the  
14 Americans with Disabilities Act says confidentiality of medical  
15 records is a federal offense.

16 CHAIRMAN LOCKYER: Now, you're working where?

17 MS. VASQUEZ: The Department of Rehabilitation, the  
18 Americans with Disabilities Act Implementation Section.

19 CHAIRMAN LOCKYER: Where is that?

20 MS. VASQUEZ: That is on the first floor of the  
21 Department of Rehab.

22 CHAIRMAN LOCKYER: In Sacramento?

23 MS. VASQUEZ: In Sacramento.

24 I notified the U.S. Attorney General and the  
25 Department of Justice, and they have been -- informed me of the  
26 process in which to file a suit, and I've done so.

27 I'm here basically as a citizen, and my thing is that  
28 I don't believe that the taxpayers should continue to pay her



1 salary and those of her primary chiefs of staff; mainly, Rich  
2 Bayquen, who I had talked to in the past; Curtis Richard, who is  
3 also appointed; and most preferably, Brenda Premo.

4 I have suffered not only emotional and physical  
5 abuse, but I had suffered a more dramatic trauma, and that is  
6 that I may never heal from my injuries.

7 In August of '94, what turned out to be just a  
8 herniated disk resulted in three ruptured disks in my neck. My  
9 doctor has stated that I may never heal from that.

10 I think if the Director had taken basically control  
11 of her staff and investigated it, and had basically talked to  
12 me, my CSEA representative, and investigated all the allegations  
13 and all the documentations which we provided her, that I would  
14 have not endured these irreparable damages to my health and to  
15 my psyche.

16 I have also learned that in November of '94, Curtis  
17 Richard has continued to basically disclose the confidentiality  
18 of his staff. He prepared a memorandum in which he tells a  
19 supervisor that there's nothing wrong with the ADA unit. That  
20 the problem, what's wrong with the ADA unit is a staff member,  
21 and goes down the list and basically says that they're all a  
22 bunch of crazy people, and he names them by name. And then he  
23 says that his supervisor is having marital problems and should  
24 not bring them to the department.

25 I have learned since then that the five members of  
26 the seven-member staff have filed a complaint with the CSEA, and  
27 I can provide that memorandum which was given to my attorney.

28 CHAIRMAN LOCKYER: You currently have an action





1 pending?

2 MS. VASQUEZ: Yes, I do.

3 CHAIRMAN LOCKYER: What's the nature of that  
4 complaint?

5 MS. VASQUEZ: That's on three counts. One is  
6 violation of the Federal Information Practices Act, disclosure  
7 of my medical records, and damages.

8 CHAIRMAN LOCKYER: All right.

9 MS. VASQUEZ: The Department then sent me to a  
10 fitness for work exam and interfered in the examination. As you  
11 can see, I am not a black Hispanic. The doctor put me down as a  
12 black Hispanic.

13 He stated that I was born in November 1st of '55, on  
14 page 1, yet on page 3, he has me a 40-year-old woman, all within  
15 two pages I've aged.

16 The report itself is extremely damaging. It contains  
17 a lot of inaccuracies.

18 I have then taken legal actions to file the complaint  
19 with the Medical Board.

20 CHAIRMAN LOCKYER: Pardon me, but '55 is 40 years  
21 ago.

22 MS. VASQUEZ: It's '53; I'm 41. At the time I was  
23 40.

24 That report was also Xeroxed and shared.

25 I was told by the psychiatrist that my supervisor  
26 would not obtain copies of that document. Yet, three  
27 individuals found copies of it in the recycle bin in the main  
28 Xerox room, and also underneath the Xerox machine.



1           When the Department asked me to provide them with  
2 refuting information, I was not aware that this had happened,  
3 and that four people had come forward to my attorney, presenting  
4 him with copies of those documents.

5           This only shows that Ms. Premo cannot control her  
6 staff, and I feel as a taxpayer she is not fit as a Director.

7           CHAIRMAN LOCKYER: How many tiers of staffing  
8 bureaucracy are there between the Director and yourself?

9           MS. VASQUEZ: Two.

10          CHAIRMAN LOCKYER: So, her, and then two below her,  
11 and then yourself.

12          MS. VASQUEZ: Uh-huh.

13          CHAIRMAN LOCKYER: Who are those two?

14          MS. VASQUEZ: Rich Bayquen, Curtis Richard, and my  
15 manager.

16          CHAIRMAN LOCKYER: Are they all civil service  
17 positions?

18          MS. VASQUEZ: No, they're not. They're CEAs.

19          CHAIRMAN LOCKYER: Your manager?

20          MS. VASQUEZ: My manager's the only civil servant.

21          CHAIRMAN LOCKYER: And then above that --

22          MS. VASQUEZ: Are two career appointments.

23          CHAIRMAN LOCKYER: -- career execs, so they're in  
24 effect exempt from the civil service --

25          MS. VASQUEZ: That's correct.

26          CHAIRMAN LOCKYER: -- rule.

27          Are there questions from Members?

28          Ms. Premo, I think you probably would wish to respond



1 or comment, if you want.

2 MS. PREMO: For the very reason that Grace mentioned,  
3 the confidentiality of the case, although there's many comments  
4 that could be made, it would -- my attorney's advised me that I  
5 should not comment on any case that is currently under  
6 litigation, especially of a personnel nature because of the  
7 issues of confidentiality that Grace talked about.

8 CHAIRMAN LOCKYER: Well, if --

9 MS. PREMO: In a general way, I can respond.

10 CHAIRMAN LOCKYER: -- her medical records were  
11 distributed --

12 MS. PREMO: I don't know that to be the case,  
13 Senator.

14 CHAIRMAN LOCKYER: If that's true, that's a violation  
15 of the law.

16 MS. PREMO: If that were true, but I don't know that  
17 to be true.

18 In a general case, let me tell you what we have done  
19 since this administration, beginning with Mr. Trainer and then  
20 myself.

21 CHAIRMAN LOCKYER: All right.

22 MS. PREMO: In the area of affirmative action and  
23 discrimination, we've appoint -- we've upgraded the manager,  
24 Mike Fuentes, and created two additional staff positions to deal  
25 with the issues of discrimination and affirmative action.

26 In the area of reasonable accommodation, when we came  
27 on board, there was a loose system that was slow. We  
28 streamlined that system, put procedures together, even color





1 coded the top page so that we knew the reasonable accommodations  
2 were coming. We have 2200 employees and over 104 offices.

3 CHAIRMAN LOCKYER: This is within your own  
4 Department?

5 MS. PREMO: That's correct.

6 In addition to that, we required a central place for  
7 those reasonable accommodations requests would go.

8 Now, specifically addressing the confidentiality act  
9 of the ADA, many people, consumers and employers, don't  
10 understand everything that's in the Act.

11 Grace is absolutely correct, that the Act addresses  
12 the confidentiality of medical records. They must be kept, by  
13 law, under a separate folder; not even in the same folder as the  
14 regular employee documentation. In this Department, we have set  
15 up a procedure to do that.

16 We have also set up a procedure that all discussions  
17 pertaining to information would be kept confidential. I have  
18 not seen the details of this case because of that  
19 confidentiality. Only the people who have dealt with Grace at  
20 her union level, and in specific at our own manager level that  
21 deals with this particular action, and her supervisor, would  
22 have dealt with it.

23 Because of the confidentiality that the law requires,  
24 not only in ADA but in personnel, I cannot get into the  
25 specifics of her case.

26 I can say, though, that since I've been there, the  
27 Department has increased its vigilance in all areas: sexual  
28 harassment, affirmative action, civil discrimination suits. And



1 we have a very small percentage, given the 2200. I have only  
2 been briefed about four complaints in the last three years that  
3 I have been there.

4 So the Department will receive complaints. And there  
5 will be times, I am sure, that corrective action will need to be  
6 taken. However, in a department this size, I think that's a  
7 pretty good number.

8 CHAIRMAN LOCKYER: These were complaints about what  
9 kind of thing?

10 MS. PREMO: Broad nature: discrimination,  
11 affirmative action. The broad kinds of issues, that you want to  
12 have the process in place to assure that employees have a way to  
13 express their concerns.

14 CHAIRMAN LOCKYER: And you would include within those  
15 four, then, the one we've just heard?

16 MS. PREMO: That's correct.

17 CHAIRMAN LOCKYER: It's hard to understand why the  
18 Director can't review whether your subordinates violated the law  
19 in distributing medical records.

20 MS. PREMO: I do not in fact know that was true. I  
21 just can't comment. I cannot comment on the case because of the  
22 litigation.

23 I can just tell you that I do not know that that's  
24 true.

25 And the procedures that are followed on paper would  
26 definitely keep that from being true.

27 CHAIRMAN LOCKYER: You mean, the distribution?

28 MS. PREMO: The way in which we protect who we allow





1 to have documents, the stamping process we use for documents.  
2 It's big enough for me to read. It says, "Confidential.  
3 Client-Attorney Privilege." It's stamped on documents.  
4 Documents are required to be sealed. So, there are things that  
5 we do, and so I cannot -- I can't comment on this particular  
6 case, but I can say that we have procedures that protect against  
7 the kinds of things that are occurring.

8 If I should discover that they are occurring, yes,  
9 they will be corrected. And yes, the people who do them will be  
10 dealt with.

11 CHAIRMAN LOCKYER: Do you wish to add anything?

12 MS. VASQUEZ: I want to know why the process was  
13 implemented after I left the Department on June 10th?

14 CHAIRMAN LOCKYER: Which process?

15 MS. VASQUEZ: The confidentiality.

16 My understanding is, as an employee of the Department  
17 of Rehabilitation, and also as an person who wrote some of the  
18 procedures that she's referring to, the procedure was always in  
19 place. It is in the federal guidelines and laws.

20 There's also a state process in which confidentiality  
21 is also in your books. It's in the Government Code.

22 When I informed the attorney for the Department of  
23 Rehabilitation, the Department itself said, "Where is it  
24 written?" And I quoted her the Government Code as well as the  
25 federal code.

26 My concern is that the process of basically  
27 slanderizing the employee, of not looking at the employee's  
28 initial complaint and saying, "Okay, you have a complaint. I



1 want to hear it," and then it is heard.

2 What happens is, there's an enormous amount of  
3 retaliation to the point where the employees feels overwhelmed.  
4 And in my particular instance, I tried to work within the  
5 bureaucratic system, and I was turned away.

6 MS. PREMO: Senator, Grace has put in a lawsuit. If,  
7 in fact, what she alleges is true, that will be determined  
8 through the legal system.

9 It is awkward for us. I have here Gwen, who is our  
10 attorney, but again, because of the very issues Grace talks  
11 about, if we begin to discuss the issues, we will harm ourselves  
12 in terms of the case, her and ourselves, so I would prefer to  
13 keep this in litigation and to keep it outside of this process.

14 CHAIRMAN LOCKYER: I understand. It's clear that  
15 she's waived any expectation of confidentiality in discussing  
16 the matter here, and I think you could respond if you feel the  
17 need to.

18 I also don't want to litigate a specific case,  
19 because that's not our job, other than to take comment on  
20 management strengths or weaknesses that might be relevant to  
21 confirmation.

22 MS. PREMO: I can say in a general sense that if it  
23 comes to my attention that those things have actually occurred,  
24 then we will take action. In those cases where we have observed  
25 flaws in any of the procedural systems, whether they be  
26 inventory or personnel actions, we have taken action.

27 So therefore, in this case, if that is found to be  
28 true, we will take action. But in this particular case, I just



1 would feel more comfortable keeping the case where it needs to  
2 be, and that's in court.

3 CHAIRMAN LOCKYER: I understand your point.

4 Thank you very much for your comments.

5 Senator Lewis.

6 SENATOR LEWIS: Could you possibly describe the  
7 action you took with regard to maybe one of the other three  
8 cases to try to remedy?

9 MS. PREMO: None of the cases occurred -- let me back  
10 up.

11 None of the situations which we are now dealing with  
12 occurred when I was Director. I became Director in February,  
13 and many of you are familiar with the state system. By the time  
14 something processes through, you can three directors over.

15 In this case, Grace is the closest, is the first  
16 where I was actually Director, where I'm the sitting Director at  
17 the time that the case was filed.

18 The other cases came to me as Director, or are coming  
19 to me as Director, way along the course of events. So, either  
20 Gwen as our attorney would have to respond to what we did in the  
21 past.

22 I can only tell you that they're moving through the  
23 system now in a way that litigation moves through the system.

24 SENATOR LEWIS: Thank you.

25 CHAIRMAN LOCKYER: Other questions from Members of  
26 the Committee?

27 I guess we've probably concluded the opportunity for  
28 testimony, unless there are others that feel there is some





1 compelling need to add anything.

2 Ms. Premo, I don't know if you want to conclude in  
3 any way.

4 What I'm going to suggest to the Committee is that we  
5 take the matter under submission for this next week, and keep it  
6 on our agenda for vote only in a subsequent hearing.

7 But I do want to let you close and respond, if you  
8 have anything to mention that we haven't already touched on.

9 MS. PREMO: I would like to thank the Members for the  
10 opportunity to present.

11 As regarding your questions about Social Security, I  
12 am the Director of the Department of Rehabilitation. I have a  
13 \$345 million budget.

14 My primary responsibility to this state and the  
15 taxpayers of this state is to oversee that \$345 million budget.

16 I have a secondary, very important, in my view,  
17 responsibility, and that is to advise, when asked, or  
18 proactively, on issues that may affect my constituencies.

19 As Director, I have to take the time and have the  
20 responsibility to deal with those issues which are primary to my  
21 shop. If I jump around everybody else's shop, the old beam in  
22 the eye thing, I will not be doing my job.

23 While I concur that there needs to be a consistent  
24 policy in all areas of disability policy, I do not believe it's  
25 my responsibility, nor should it be an issue of my  
26 responsibility, to know what every budget item in disability is  
27 in every department.

28 I am happy, however, if it's requested of me, or the



1 staff in my Department, to provide, like we did with the Harris  
2 poll, information that can help guide the Legislature and the  
3 Governor in those budgetary items. However, as Director of  
4 Rehab, I can't do the job of my partners in Social Services, the  
5 Department of Health, or any other department. I can only  
6 provide the advice. I have no authority to do so.

7 So, with that in mind --

8 CHAIRMAN LOCKYER: Perhaps I'm misreading the job  
9 description that I'm provided with.

10 MS. PREMO: I have nothing to do with Social  
11 Security.

12 CHAIRMAN LOCKYER: Wait a minute.

13 It describes the responsibility and mission of the  
14 Department of Rehabilitation, which includes among other things:  
15 advocacy for the rights and opportunities of the disabled.

16 Now, if you don't think 10 percent or 8 percent cuts  
17 in income support for your clients is part of your job, which is  
18 what you've just said again, fine.

19 But I want to give you notice that that attitude  
20 moves me from an enthusiastic yes, to a disappointed no.

21 Now, I'm going to wait a week before trying to go to  
22 a vote on the matter. I've heard you say it twice; saying it a  
23 third time, like any other good old Sacramento bureaucrat, isn't  
24 going to be persuasive, that it has nothing to do with your  
25 Department, that the money is elsewhere.

26 You're abdicating your responsibility to represent  
27 people who are less able to speak out for themselves, and  
28 defying an explicit mission objective of your Department.





1           So, let's talk about that next week.

2           MS. PREMO: That'll be fine, Senator.

3           I think on behalf of the folks that I serve, in  
4 closing, I'd like to say they're very capable of speaking on  
5 their own behalf. And many of them will be very ardent to  
6 advocate.

7           I don't think we need to downgrade people with  
8 disabilities by believing that those in the community, because  
9 they happen to be deaf or blind or in a wheelchair, are not very  
10 able to speak before you in this Committee and the other  
11 committees on their own behalf about their concerns.

12           And it is true, the Department is an advocate. And  
13 part of that advocacy is to say to you, "Listen to the folks  
14 from the community." They're very capable of articulating on  
15 their own behalf.

16           Thank you, Senator.

17           CHAIRMAN LOCKYER: Thank you very much. I repeat my  
18 previous comment. I'm frankly quite disappointed.

19           Why don't we take a five-minute break, and then we'll  
20 move to the Air Resources Board.

21           [Thereupon a brief recess was taken.]

22           CHAIRMAN LOCKYER: We will begin again.

23           I guess Mr. Calhoun is first up here. I'll just try  
24 to pitch soft balls, if you'll take a swing.

25           [Laughter.]

26           CHAIRMAN LOCKYER: Do you have anything you want to  
27 comment to being?

28           MR. CALHOUN: Yes, Mr. Chairman.



1 I am honored to appear before this Committee today,  
2 especially in connection with the Senate's consent to my  
3 appointment to the Air Resources Board.

4 I have served on the Board in the automotive  
5 engineering position for eleven months, and I'd like to continue  
6 serving in that capacity.

7 My work experience and education, I think, uniquely  
8 qualifies me for the position that I currently occupy. My  
9 experience, work experience, has been about evenly divided  
10 between government and private industry, except for the time  
11 that I spent in the military, of course.

12 I got started in this business on March the 12th,  
13 1956, when I was hired by the Los Angeles County Air Pollution  
14 Control District as an inspector. And my initial assignment was  
15 chasing smoking incinerators. I had a lot of subsequent duties  
16 with the L.A. County Air Pollution Control District, including  
17 inspection of refiners and chemical plants.

18 And later, I moved to the State of California. I was  
19 assigned to an emissions research and test facility. The  
20 initial assignment was to study the impact of auto exhaust on  
21 smog formation, and from there I moved into a laboratory and  
22 supervised the testing of automobiles and later became Chief of  
23 Motor Vehicle Compliance for the Air Resources Board. And in  
24 that job, there was a lot of contact with industry, both the  
25 automobile manufacturers and with others who were developing  
26 emission control devices, and I learned a lot from all of the  
27 experience.

28 In 1974, I went to work for General Motors at its



1 Environment Activities Staff at the GM Technical Center in  
2 Warren, Michigan. My first assignment there was representing GM  
3 in states other than in California, those states that were  
4 getting involved in trying to control pollution from  
5 automobiles. And essentially, the focus was on what's commonly  
6 known here as Smog Check, or inspection and maintenance.

7 Several years later, the person who was responsible  
8 for the California operation had a stroke, and they assigned me  
9 to the California assignment. Now, I don't know if the stroke  
10 was attributed to the pressure of this particular job or not,  
11 but nevertheless, he was unable to continue in that capacity.

12 I continued doing that, and worked in other  
13 assignments for GM until July, 1993. And during the time I was  
14 working for GM, I testified before the various legislative  
15 committee in the Senate and the Assembly, and also testified  
16 before the Air Resources Board on many occasions.

17 Now, a lot of the regulations that are currently on  
18 the books for the Air Resources Board, I wrote. I presented  
19 many staff reports to the Board in order to try to justify the  
20 regulations. So, that's sort of a balanced, balanced  
21 experience, and that is the thing that I bring to the table.

22 I think that as a result of my experience, I can view  
23 what the staff is saying in an objective manner. I can also  
24 view what the industry is saying in an objective manner.

25 And based on that, I feel that I can make a very good  
26 decision, based on the input that's been given and presented at  
27 these regulatory hearings.

28 So, with that particular background and education, I





1 hope that you will seriously consider confirming me for  
2 appointment to the Board.

3 I'll be happy to answer any questions that you have.

4 CHAIRMAN LOCKYER: Thank you, sir.

5 What's been the toughest question or issue to come by  
6 during your service up to now on the Board?

7 MR. CALHOUN: I can't think of any one particular  
8 issue. There are a lot of them that we faced thus far that  
9 called me to agonize over the decision that has to be made, and  
10 primarily because the Board's staff, especially in the  
11 automotive field, has proposed technology-forcing regulations.  
12 And a lot has been accomplished as a result of that.

13 However, there are occasions when it's necessary to  
14 back away from the position that they're proposing, because the  
15 technology hasn't caught up with the proposed regulations.

16 So, the question that you're faced with is, deciding  
17 when to back off and when not to back off.

18 But fortunately, as I've said, I've had enough  
19 experience with them, such that I can make a fairly good  
20 judgment of the testimony presented. But that's the thing.

21 CHAIRMAN LOCKYER: What is it about the staff dynamic  
22 or culture that would bring you proposals that are  
23 technologically infeasible?

24 MR. CALHOUN: Well, I didn't say -- the staff, at the  
25 time they bring these regulations before the -- at the time they  
26 propose the regulations, they don't know if they're feasible or  
27 infeasible. They will propose them, and hopefully, the industry  
28 will develop the technology.



1 But in some cases, the industry doesn't succeed in  
2 getting the technology. In that case, they have to kind of back  
3 away.

4 CHAIRMAN LOCKYER: What's an example that comes to  
5 mind of where you thought either going forward or slowing down  
6 was the correct thing to do in that circumstance?

7 MR. CALHOUN: Well, we just had a hearing about three  
8 or four months ago -- three or four weeks ago. And in this  
9 particular hearing, we were talking about on-board diagnostics.

10 The staff had proposed a regulation which would  
11 require that the manufacturers be able to detect any misfiring  
12 of the engine at all speeds and loads. And that's a very  
13 difficult decision. There are some speeds and loads that people  
14 seldom operate at, and the technology just wasn't there. They  
15 had hoped that it would get there, and they had to backtrack  
16 from that and try to on with something that was a little more  
17 reasonable. That's a typical example.

18 CHAIRMAN LOCKYER: Are there circumstances, let's say  
19 zero emission, where there is urging by some to slow down the  
20 current regulatory timetable that you either agree or disagree  
21 with?

22 MR. CALHOUN: I think the Board has already adopted  
23 the zero emission vehicle, along with a lot of other standards,  
24 and there has not been any changes in that.

25 There are people who advocate that there ought to be  
26 some changes, but I think the big concern that the auto industry  
27 has is the mandates, saying you have to sell a certain  
28 percentage of these vehicles at a given time. And that's an





1 understandable concern.

2 But we just have to face that, and with the  
3 regulations still on the books, the manufacturers are working  
4 diligently, I presume, to try to comply with the deadline, which  
5 is starting in 1998, and we have to see what develops.

6 The big concern I have is whether or not the people  
7 are going to buy these vehicles. I think that's the concern we  
8 all will have, and certainly I'm hoping that we'll have a  
9 successful program.

10 CHAIRMAN LOCKYER: Other Senators? Senator Ayala.

11 SENATOR AYALA: Mr. Calhoun, I'm sure you're aware of  
12 the proposal by Mayor Riordan that would remove controls in the  
13 urban areas for pollution yet enhance them down in the inland  
14 part of Southern California. Dairy farms, and dust, and  
15 construction, all that.

16 Since I'm familiar, I think it can be proven that the  
17 Inland Empire gets 85 percent of their pollution from the  
18 L.A./Orange Counties with intrusion from the west with the  
19 marine winds. How would that improve the pollution in Los  
20 Angeles County?

21 MR. CALHOUN: Well, yes, I'm aware of the proposal.  
22 And I can understand your position also.

23 SENATOR AYALA: Are you opposed to that?

24 MR. CALHOUN: Am I opposed to it, I think the  
25 position that the Mayor has taken is one that needs to be  
26 carefully looked at. There are a lot of areas that complain  
27 about the trash boards. And I think the complaints are  
28 justifiable.



1           Like, take San Diego, for example. They complain  
2 about the pollution from the South Coast Air Basin.

3           But I haven't really studied the Mayor's position  
4 carefully enough in order to be able to --

5           SENATOR AYALA: Neither have I, but on the surface  
6 it's kind of ridiculous; what he's saying.

7           I'm not an expert, but it appears to me that by going  
8 downstream, with the polluters are down there and correct the  
9 problems in Orange and L.A. Counties is a little bit ridiculous.

10          MR. CALHOUN: He's looking out for his city.

11          SENATOR AYALA: I'm looking out for the Inland  
12 Empire.

13          Anyway, you're not sure you support it or not?

14          MR. CALHOUN: No, I wouldn't -- just off hand, I  
15 can't think of supporting transferring pollution from one town  
16 to another.

17          I haven't studied the Mayor's position. I don't know  
18 all the details of it, so I wouldn't want to take a position on  
19 it right now.

20          SENATOR AYALA: There's a study by, I think, the Farm  
21 Bureau. Over the last ten years, there's been at least \$100  
22 million of damage to crops as a result of ozone. Are you  
23 familiar with that?

24          MR. CALHOUN: Over the years, that has been one of  
25 the main concerns, is about the need to control ozone. And that  
26 is because it does damage crops.

27          And that is really kind of the impetus for some of  
28 the programs --



1           SENATOR AYALA: Will the ARB take a look at that  
2 report at all?

3           MR. CALHOUN: I don't know if the ARB has taken a  
4 look at that report, but that's not a new story.

5           SENATOR AYALA: Okay, so it's old.

6           MR. CALHOUN: That's old.

7           SENATOR AYALA: But what have you done about it if  
8 it's old?

9           MR. CALHOUN: Well, one of the things that the Air  
10 Resources Board has done is try to control the formation of  
11 ozone. And in order to control the formation of ozone, there's  
12 a need to control hydrocarbons and oxides of nitrogen.

13           And I think there's a good record of the progress  
14 that has been made in controlling hydrocarbons and oxides of  
15 nitrogen, and that controls the -- would tend to lessen the  
16 formation of ozone.

17           SENATOR AYALA: How are we doing with the SIP, the  
18 State Implementation Plan? Do we have any plan we're really  
19 following at this point?

20           MR. CALHOUN: Well, we filed the plan at the  
21 prescribed deadline. The feds have reacted to it initially by  
22 not taking a position on the plan that we adopted and said  
23 they're going to hold off for a couple years before making any  
24 kind of decision.

25           But the state has -- the State of California did  
26 submit its implementation plan on time.

27           SENATOR AYALA: But if the South Coast Air Pollution  
28 District came up with some way to control smog on automobile





1 exhaust.

2           You have to approve it first before they will  
3 implement it; correct?

4           MR. CALHOUN: If -- the South Coast District, along  
5 with all the other air quality management districts, are  
6 required to submit a plan to meet the state ambient air quality  
7 standards. The Air Resources Board has to approve those plans.  
8 And then, once the plans are approved, the local agency must  
9 develop rules also, but the enforcement and implementation of  
10 the rules is left up to the local agencies.

11           SENATOR AYALA: But if your Board approves the plan,  
12 they don't look at the regulations after that?

13           MR. CALHOUN: Oh, yes. If the Board approves a plan,  
14 the local agencies must then follow and develop the regulations  
15 to implement the plan. And these regulations are also submitted  
16 to the Air Resources Board.

17           SENATOR AYALA: Thank you.

18           CHAIRMAN LOCKYER: Senator Petris.

19           SENATOR PETRIS: I'm concerned about the  
20 fragmentation that we seem to have. Looking at the overall air  
21 pollution problem, there's several different agencies that are  
22 supposed to regulate parts of it. You know, like automobile  
23 smog control system, and the pesticide group used to be within  
24 the Department of Agriculture, and now it's under EPA. About  
25 four of them seem to overlap, and in some cases, one agency  
26 says, "Well, we'll not allowed to do that. It's the other  
27 agency." Then it turns out it's not being covered.

28           I understand from our notes here that there is some



1 discussion going on between the ARB and the Department of  
2 Pesticide Regulation to reach some kind of agreement. Are you  
3 familiar with that?

4 MR. CALHOUN: Yes, to some extent. This was,  
5 regroupment was required, and most of the discussion that took  
6 place, took place prior to the development of the State  
7 Implementation Plan, because in order for the state to develop a  
8 plan to control some of the pesticides, there was a need to get  
9 these other departments on board and to discuss them. And they  
10 did get together with the ARB staff and developed a plan, and  
11 that's included as part of the State Implementation Plan and was  
12 submitted to --

13 SENATOR PETRIS: When was that adopted?

14 MR. CALHOUN: The plan, I believe, was adopted on the  
15 14th or the 15th; on the 14th, I believe, of November.

16 SENATOR PETRIS: Have you been able to observe its  
17 operation to see how it's going?

18 MR. CALHOUN: The plan has just been submitted to the  
19 federal government for --

20 SENATOR PETRIS: You haven't gotten approval yet?

21 MR. CALHOUN: No, sir.

22 SENATOR PETRIS: As I understand it, if we don't  
23 adopt a plan that's acceptable to them, then they take over the  
24 function.

25 MR. CALHOUN: Yes.

26 SENATOR PETRIS: And that's bad for everybody.

27 MR. CALHOUN: That's correct.

28 SENATOR PETRIS: Including the farmers who use these



1 things, and industrial users, and everybody else.

2 MR. CALHOUN: That's one of the reasons why so much  
3 emphasis was placed on the importance of adopting a plan. And  
4 so, we did hold many hearings -- hold hearings and finalized the  
5 plan, and submitted it to the EPA on time.

6 SENATOR PETRIS: What is your impression of the plan?  
7 Do you think it's adequate? Is it strong in its enforcement?

8 MR. CALHOUN: Well, I hope so; I hope so. I think  
9 there's a lot in it, and a lot to do in order to implement that  
10 plan.

11 But the feds now -- the federal government will take  
12 a look at the plan, evaluate it, and decide whether they think  
13 it's adequate or not.

14 SENATOR PETRIS: Are you optimistic about it?

15 MR. CALHOUN: Yes, I am.

16 CHAIRMAN LOCKYER: Senator, may I on that point  
17 inquire?

18 SENATOR PETRIS: Yes.

19 CHAIRMAN LOCKYER: Is there any piece of the plan,  
20 the SIP, that is, that you regard as weak, overly optimistic, or  
21 any defect that gives you any concern at all?

22 MR. CALHOUN: Not at this time. I think the -- when  
23 we start adopting the rules to implement this plan, then we'll  
24 really find out how successful we're going to be. But as of  
25 right now, I say no.

26 CHAIRMAN LOCKYER: As a general sketch, it feels  
27 adequate?

28 MR. CALHOUN: Yes.





1 CHAIRMAN LOCKYER: As I understand it, there's an  
2 element that would require retiring about 75,000 automobiles  
3 that are the high polluting vehicles.

4 MR. CALHOUN: Yes.

5 CHAIRMAN LOCKYER: Does the plan talk about how to  
6 pay for that?

7 MR. CALHOUN: No, it does not.

8 CHAIRMAN LOCKYER: What discussions have occurred?

9 MR. CALHOUN: Well, there were a lot of discussions a  
10 the Board hearings, and there are a lot of discussions now about  
11 going on among the proponents of that particular program, and  
12 there's been a few internal discussions within the Air Resources  
13 Board staff about this. And I suppose there are different ways  
14 of funding it. For example, it's conceivable that the industry  
15 may be offered some incentive to buy up a lot of these old cars  
16 themselves. And I think that's a possibility. I think it's one  
17 we ought to pursue.

18 I think also in the different counties, for example,  
19 I believe in the City of Los Angeles, they impounded something  
20 like 30,000 vehicles this past year. Those are vehicles that --  
21 and they dispose of them through auction. Some of those  
22 vehicles should be used, and the funds coming from them, could  
23 be used to support that.

24 I just think it's something that warrants taking a  
25 real good look at, especially when you consider that these old  
26 vehicles, many of them are real high polluters.

27 CHAIRMAN LOCKYER: Would the ARB have to come up with  
28 a funding scheme, or is that somebody else's job?



1           MR. CALHOUN: I think the -- at the hearing, this was  
2 one of the issues that was discussed extensively, and we had  
3 representatives there from Western States Petroleum Association,  
4 the oil companies, and some other, the California Trucking  
5 Association, who had very strong feelings about this. And they  
6 committed themselves to help develop the necessary support to  
7 get legislation, or whatever is required, in order to fund this  
8 program. And obviously, the Board's going to be a party to  
9 this.

10           CHAIRMAN LOCKYER: Other Members?

11           I guess there's something of an ongoing dispute that  
12 relates to renewable resources as part of the fuel policies for  
13 the state.

14           Could you maybe just educate me as to the current  
15 status of that discussion before the Board?

16           MR. CALHOUN: One of the things that I'm aware is the  
17 concern about ethanol. I had a meeting sometime ago at the  
18 request of some of the proponents of ethanol. They wanted to  
19 meet with me and discuss this, because they felt that the  
20 position that the Board took relative to the use of ethanol in  
21 this particular state was not the right position to take, and  
22 they were concerned about it.

23           And this was sort of after the fact when it came to  
24 my attention. And I say, well, why are you telling me about it,  
25 because it's something that's already happened. And I said I  
26 assume that the reason why you wanted to bring it to my  
27 attention is because you'd like the issue revisited. And they  
28 said they would.



1           And I said there are ways of doing that. You can  
2 petition the Board, you can talk to the staff and ask the staff  
3 to take another look at it, and may be the staff will come in  
4 with some changes, or you can come to the Board itself and try  
5 to do something on your own.

6           And I think they will probably do that, one of those  
7 two or three things.

8           CHAIRMAN LOCKYER: This hasn't been discussed while  
9 you were a member of the Board?

10          MR. CALHOUN: No, sir, not that I can recall it was  
11 discussed.

12          As I say, it was discussed with me. It was brought  
13 to my attention sometime within the past two or three months.

14          CHAIRMAN LOCKYER: Not as a Board member?

15          MR. CALHOUN: No.

16          CHAIRMAN LOCKYER: Just to be clear about this, it  
17 was a problem that led, I think, to the withdrawal of Ms.  
18 Schafer's nomination. There was documentation presented to this  
19 Committee that indicated or suggested a lack of independence  
20 from regulated industries on the former Chair's part.

21          We were going to vote no, and the Governor chose to  
22 withdraw it.

23          I take you at your word that this hasn't been a  
24 matter discussed or reviewed by you. All I would urge on you is  
25 to comply with the law and be independent. You're an  
26 independent regulator, so use your best judgment and don't  
27 succumb to political pressures. Just do the job.

28          Other questions?





1           SENATOR PETRIS: Is this on the fuel dispute?

2           CHAIRMAN LOCKYER: That was where I was.

3           SENATOR PETRIS: Well, I wanted to ask something on  
4 that, too.

5           We have the situation in which the state is -- is  
6 there a lawsuit pending against the Federal EPA, or oil refiners  
7 filed and we joined in? Are you familiar with that?

8           MR. CALHOUN: I don't know. I believe there is. I'd  
9 have to -- I don't know that to be a fact.

10          SENATOR PETRIS: It's a very important part of what  
11 Senator Lockyer was going into. We've got a strange alliance  
12 here, where the oil refiners don't like the gasoline additive  
13 rules that the federal government adopted, so they sued them.  
14 Then we jump in as a state, two state agencies, in support of  
15 the refiners.

16          Their function is really to make sure we have clean  
17 air.

18          MR. CALHOUN: Yes.

19          SENATOR PETRIS: Now, I don't know. Do they feel  
20 that the additive policy of the federal government will pollute  
21 the air further, or it's too much of a burden on the refiners to  
22 do whatever the federal government wants them to do? You're not  
23 familiar with that?

24          MR. CALHOUN: I am familiar with it, but not to any  
25 detailed extent.

26          I do know that there was some action taken at the  
27 federal level, but I don't know all the details enough about it.

28          As I said, the only thing that came to my attention



1 was just something that occurred within the past two or three  
2 months, where they approached me about this issue. And I told  
3 them if they wanted something done about it, and wanted the  
4 state to take another look at it, they should take the  
5 appropriate action in order to bring it back before the Board.

6 CHAIRMAN LOCKYER: As I understand the policy, and it  
7 seems to be the appropriate one, it's supposed to be fuel  
8 neutrality.

9 MR. CALHOUN: That's correct, yes.

10 CHAIRMAN LOCKYER: When the Chair submits comments to  
11 the federal government that are prepared in the law office of  
12 one of the oil companies involved, that seems to violate the  
13 basic -- and I don't mean for you to get drawn into that dispute  
14 in any way, sir, but just to indicate why there's a concern.

15 If fuel neutrality is the policy, follow the policy.

16 MR. CALHOUN: That's the Board's policy as I  
17 understand it.

18 CHAIRMAN LOCKYER: Does that seem appropriate to you?

19 MR. CALHOUN: Yes, sir.

20 CHAIRMAN LOCKYER: Senator, I didn't mean to cut you  
21 off.

22 SENATOR PETRIS: No, that's fine.

23 Get back to the SIP, first there was a federal court  
24 decision that we were out of compliance all over the place. As  
25 I understand it, 90 percent of all Californians live in areas  
26 that exceed the amount of pollution permitted under both federal  
27 and state limits.

28 The L.A. air basin exceeds the federal smog standards



1 by up to 200 percent on roughly half of the days each year.  
2 That's the price of having a lot of sunshine, I guess, part of  
3 it. And that, of course, is injurious to the public health; it  
4 destroys crops; it kills trees.

5 Up in your area, that smog comes in there, knocks out  
6 a big part of the forest over a period of years; it even eats up  
7 buildings.

8 So, I'm concerned that in spite of all of our  
9 efforts, we still have this horrible problem. That's why I  
10 asked earlier if you thought the state plan, the Implementation  
11 Plan, was strong enough to really do what we need to do to get  
12 out of this situation. We've got to improve our situation.

13 Now, is your opinion based on having working on it,  
14 or was most of that done before you came on board?

15 MR. CALHOUN: My opinion, Senator, is based on my  
16 knowledge of the plan. And we are required to submit a plan  
17 that shows attainment with the federal ambient air quality  
18 standard.

19 And the Air Resources Board has adopted of very  
20 stringent standards, especially in the automobiles. They've  
21 adopted standards that require reformulation of the gasoline,  
22 and they are talking about -- we also have a requirement for  
23 electric vehicles.

24 And based on this particular plan, they project being  
25 able to meet the ambient air quality standard.

26 Now, a lot of progress has been made. A lot of cars  
27 are -- there's a turnover of automobiles, and I think we're  
28 going to continue to make progress.





1           So, I'm optimistic that we will meet the federal  
2 ambient air quality standard, but I can't sit here and  
3 absolutely say that when D-Day comes, we're going to be there.

4           But I can say, based on the plan, I believe that we  
5 will make the necessary changes that need to be made in order to  
6 get there.

7           SENATOR PETRIS: Does that plan include the  
8 automobile conversion to electric cars?

9           MR. CALHOUN: Yes, sir.

10          SENATOR PETRIS: A certain number by the year 2000?

11          MR. CALHOUN: Yes, sir.

12          SENATOR PETRIS: Do you support that?

13          MR. CALHOUN: The South Coast District has suggested  
14 that it may be necessary to get to something on the order of 40  
15 percent in order to meet the ambient air quality standard.

16          I don't if that would be necessary or not, but if  
17 there's a way, some other way of accomplishing the same  
18 objective, and it's going to be less costly, I see no reason why  
19 I shouldn't support that.

20          SENATOR PETRIS: Some people think it'll create a lot  
21 more jobs, the switch over to the electric.

22          MR. CALHOUN: Yes.

23          SENATOR PETRIS: It doesn't apply in every part of  
24 the part, just in the worst polluted areas.

25          MR. CALHOUN: Yes.

26          SENATOR PETRIS: Everybody will be driving golf carts  
27 down there.

28          But other than the industry itself, is there active



1 opposition to that kind of a plan? Of course, the manufacturers  
2 aren't happy, I can understand that.

3 MR. CALHOUN: Well, if you ask me if there is active  
4 opposition to it, I suppose if I were selling gasoline, I might  
5 not want to see all the electric cars on the road.

6 And I don't think the automobile industry, per se, is  
7 opposed to electric vehicles. I believe they're opposed to a  
8 requirement that you must have 10 percent by this date.

9 I think that a lot of emphasis is being put into  
10 developing electric vehicles, and I would not be surprised if  
11 you saw them on the street before the start date.

12 SENATOR PETRIS: Well, they've been working on it for  
13 sometime. All the major manufactures are working on it.

14 CHAIRMAN LOCKYER: We've got one in the garage, but  
15 it seems to have about a 20-mile cord.

16 SENATOR PETRIS: Well, I had legislation on that in  
17 the '60s. The automobile manufacturers opposed it.

18 If they had gone along with me, they wouldn't have  
19 had the deadline.

20 MR. CALHOUN: I recall this, Senator Petris.

21 SENATOR PETRIS: You were with General Motors,  
22 probably.

23 No, they sent somebody else, General Motors, from  
24 headquarters to oppose it, and I started asking him a lot of  
25 questions -- very important, this issue. I'm sorry about the  
26 deviation -- that were kind of technical regarding the effects  
27 of the gasoline and impacts, and this and that, and their  
28 manufacturing process as well, and why they weren't moving



1 faster to clean it up.

2 And the fellow said, "Well, I'm just a bookkeeper.  
3 I'm in the accounting department."

4 I said, "That's why they sent you out here, because  
5 you can't answer any of the questions."

6 I'm glad you remember that era.

7 Let me go over to agricultural pesticides. I've been  
8 interested in that for a long time.

9 We have some information that the EPA has estimated  
10 that the pesticides which are used in agriculture contribute  
11 10-15 percent of the volatile organic compounds that contribute  
12 to the pesticide problem in the agricultural regions:  
13 Sacramento Valley, San Joaquin Valley.

14 That's a very hefty percentage.

15 MR. CALHOUN: Yes.

16 SENATOR PETRIS: Now, EPA has proposed a program to  
17 regulate the contents as one element of the SIP, but the state  
18 regulations are not moving. They're in limbo.

19 There again is this fractionalization. The ARB says  
20 that's not our job; that's Department of Pesticide Regulation.  
21 And that's created a little hiatus there, a gap.

22 I'm interested in finding out why the two agencies  
23 don't get together?

24 MR. CALHOUN: The two agencies did, Senator Petris.  
25 Just before -- in the process of developing the SIP, the  
26 Department of Pesticide Regulation got together with the ARB,  
27 and the ARB got together with them, and there was a lot of  
28 interaction. And they testified before the Board at these





1 public hearings, when we were in the process of developing the  
2 plan. And their input is included in the plan that was  
3 submitted to the federal government.

4 SENATOR PETRIS: We go back to the first question:  
5 is it really strong, and how effective is it likely to be? I  
6 guess we don't know until it's operating.

7 MR. CALHOUN: As I said, I think the plan itself is  
8 adequate. A lot of effort went into it. A lot of the effort  
9 will be put into development of all the regulations to implement  
10 what's in the plan.

11 I'm hopeful that we will be successful.

12 SENATOR PETRIS: In the agricultural side, I  
13 understand the damage to the crops is still running at \$100  
14 million a year, and that's our biggest industry.

15 MR. CALHOUN: Yes.

16 SENATOR PETRIS: And our biggest export.

17 When are we going to find out? Are you going to let  
18 us know sometime in the next year?

19 MR. CALHOUN: When am I going to let you know what?

20 SENATOR PETRIS: If it's working, if it's being  
21 enforced and it's working.

22 MR. CALHOUN: Well, I think the best evidence,  
23 Senator, we have that the overall air quality plan is working is  
24 to take a look at the air pollution, the month; not just on a  
25 day to day basis. Take a look at the results.

26 And I don't think there's any question but that you  
27 can see that the levels are coming down. I don't think there's  
28 any question about that.



1           Maybe they aren't coming down as fast as some people  
2 would like.

3           So, I think the plan is working. I think the program  
4 works.

5           SENATOR PETRIS: Well, I hope you're right. You  
6 know, the problem's been around for an awful long time.

7           MR. CALHOUN: That's right.

8           SENATOR PETRIS: Are you familiar with the term  
9 "environmental justice"?

10          MR. CALHOUN: In what context?

11          SENATOR PETRIS: Well, for a long time, we've been  
12 told by health officials and scientists that the most hazardous  
13 area with respect to air pollution is in low income and minority  
14 residential districts, I guess because they live near the  
15 factory, or they live near the source of pollution.

16          And the ARB has said it's going to address that  
17 problem and do it as quickly as it can.

18          Has that come up at all during your attendance at  
19 meetings?

20          MR. CALHOUN: No, sir.

21          SENATOR PETRIS: Are you familiar with it at all?

22          MR. CALHOUN: I have attended some of the South Coast  
23 hearings, and I've heard some discussion there, very briefly,  
24 about it, but I have not heard any discussions at the Air  
25 Resources Board level. There may have been some that I was just  
26 not a party to them.

27          SENATOR PETRIS: I would invite you and urge you to  
28 really take a good look at that. It's a very serious problem.



1 MR. CALHOUN: All right.

2 SENATOR PETRIS: And I think we may have to revisit  
3 our planning policies, state and local, and site planning of  
4 polluters.

5 And I know they're not going to move into my  
6 neighborhood, because it's pretty well protected by citizens  
7 who're very active in the community, and they're business people  
8 and professional people. So, they don't worry about it.

9 But there are other neighborhoods in my home town, in  
10 Oakland, that are very vulnerable. And they don't have the  
11 power to do anything. They're the victims.

12 And it seems to me, the ARB really ought to be  
13 looking into that and making recommendations on siting  
14 factories, whatever the nature of the pollution is, in addition  
15 to trying to improve the standards by preventing the pollution  
16 in the first place.

17 Senator Roberti used to have legislation three or  
18 four years in a row attacking the problem at the site and  
19 saying, "We want you to clean this up so that you're not  
20 producing pollution anymore as a by-product of your activity  
21 here."

22 I don't know if very much of that is going on right  
23 now, but it seems to me the ARB ought to be sensitive to that.

24 MR. CALHOUN: I'll make a note of it and take a look  
25 at it.

26 SENATOR PETRIS: Thank you.

27 CHAIRMAN LOCKYER: Further questions?

28 Is there anyone present who would wish to testify,





1 either for or against?

2 Senator Lewis.

3 SENATOR LEWIS: I am curious. How would you  
4 characterize the difference in air quality in the South Coast  
5 Basin in the last ten years?

6 MR. CALHOUN: Oh, in the last ten -- can I go back a  
7 little bit beyond that?

8 SENATOR LEWIS: Sure.

9 MR. CALHOUN: I'd like to go back to the summer of  
10 1955. I'd just gotten out of the Army and was going to the  
11 Engineering School at USC. And the pollution was so thick you  
12 could almost cut it with a knife.

13 And when I sit back -- and not only that. The  
14 people's eyes were irritated and running, sneezing.

15 And when I look at the air today and compare it to  
16 where it was some 40 years ago, I don't think there's any  
17 question in my mind that a lot of progress has been made.

18 And I think that what we are faced with now is moving down  
19 to very low levels, because that's going to get costly. It's  
20 going to be very, very costly to move to much lower levels.

21 SENATOR LEWIS: Your memory coincides with mine,  
22 because I grew up in L.A. I certainly remember it being a lot  
23 worse then than it is now.

24 What do you think, if you had to put your finger on  
25 the two or three policy things or technological advances, or  
26 whatever, if you could prioritize, what in your mind has brought  
27 about a diminution of the smog problem in the South Coast Basin?  
28 What would be your guess?



1 MR. CALHOUN: Well, I think one of the things that  
2 has happened has been a tremendous growth. There's no question  
3 in my mind there's more vehicles in that particular area. And  
4 there are a lot of old cars on the road, and they contribute a  
5 tremendous amount to the overall air pollution problem.

6 I don't know exactly what the service life is of most  
7 of the vehicles, but I do know many have been on the road for a  
8 long time. And if you look at nationwide, about 20 percent of  
9 the cars cause about 50 percent of the pollution problems.

10 In the South Coast Air Basin, you're looking at about  
11 10 percent of the cars causing somewhere in the neighborhood of  
12 about 30 percent of the overall air pollution problems.

13 CHAIRMAN LOCKYER: Even with all the cars, though,  
14 the expansion and growth, it seems like there's cleaner air. It  
15 may not be clean enough, but it's cleaner.

16 How did it get clean?

17 MR. CALHOUN: Well, because there's technology that's  
18 being used on the automobiles. Technology's being used in the  
19 refineries. The gasoline's a little cleaner today than it was.

20 I think the catalytic converter has been a major  
21 contributor to the cleanup of the overall air pollution problem.

22 And I think that as you get more of those old  
23 vehicles off the road, and get more of these cars with new  
24 technology on it, you're going to see a major change.

25 CHAIRMAN LOCKYER: What's the pleasure of the  
26 Committee?

27 SENATOR AYALA: I'm move.

28 CHAIRMAN LOCKYER: We have a motion to recommend



1 confirmation.

2 Call the roll, please.

3 SECRETARY WEBB: Senator Ayala.

4 SENATOR AYALA: Aye.

5 SECRETARY WEBB: Ayala Aye. Senator Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Petris Aye. Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

12 CHAIRMAN LOCKYER: Aye.

13 SECRETARY WEBB: Lockyer Aye. Five to zero.

14 MR. CALHOUN: Thank you very much.

15 CHAIRMAN LOCKYER: Good luck, sir.

16 Senator Beverly, will you take the Chair for a few  
17 minutes.

18 SENATOR BEVERLY: Next in order is Mr. Jack C.  
19 Parnell. Good afternoon.

20 MR. PARNELL: Senator.

21 SENATOR BEVERLY: Would you like to make a statement  
22 or tell us briefly why you're qualified for this post?

23 MR. PARNELL: Mr. Chairman and distinguished Members  
24 of the Senate Rules Committee, I am extremely pleased to be here  
25 seeking Senatorial consent for my nomination to the Air Board.

26 Unless there's a reason to do otherwise, in the  
27 interest of time, I'll not review my past involvement with state  
28 and federal governments. It's been considerable, and I trust --





1 if it would serve any purpose, I'd be more than happy to do  
2 that.

3 But I'd rather use the time to say that we take the  
4 challenges of clean air very seriously. We think it's a serious  
5 issue. And also to state that California, because of its large  
6 population and geographic uniqueness, presents challenges that  
7 require unique and clear thinking, as well as well-explained and  
8 bold actions from time to time in order to make progress.

9 The road that we're traveling down to cleaner air  
10 clearly has not been traveled before. There are no sign posts  
11 along the way, so there are considerable challenges that require  
12 judgments to be made from time to time. Sometimes we're right;  
13 sometimes we're wrong.

14 But California clearly has set a high standard for  
15 itself and has been leading the nation in the environmental  
16 improvement, and I'm committed to continue that environmental  
17 improvement, and continue that tradition.

18 I'd be pleased to go into more details as to my  
19 background, but will dispense with that in the interest of time,  
20 unless you deem otherwise. I'd be happy to take any questions.

21 SENATOR BEVERLY: Let's see what the questions are.  
22 Senator Petris.

23 SENATOR PETRIS: I notice Mr. Soares is here sitting  
24 with you. He's your partner, isn't he, or was?

25 MR. PARNELL: He is not my partner, but I have -- I  
26 do some consulting with that law firm that George is a member  
27 of.

28 SENATOR PETRIS: So, this Kohn, Soares and Conway is



1 a law firm?

2 MR. PARNELL: It's a law firm.

3 SENATOR PETRIS: Well, I raise the question of a  
4 possible conflict. I'd like you to answer it.

5 ARB, as we indicated earlier, you don't have  
6 jurisdiction over agricultural problems, pesticides. That's  
7 that other department.

8 But Mr. Soares was very active in opposing cleanup  
9 legislation regarding the use of chemicals, pesticides,  
10 eliminating some of them from use, and trying to find better  
11 alternatives, and so forth. He and I have been friendly  
12 adversaries for years on that issue.

13 I'm wondering if any of that spills over. I don't  
14 want to be unkind, but I wonder if he's polluted the air in your  
15 law firm to think everything's okay and you don't need to clear  
16 it up, and here you are on the Air Resources Board?

17 MR. PARNELL: Senator Petris, I fully appreciate --

18 SENATOR PETRIS: Not in your law firm, in his law  
19 firm to which you are a consultant.

20 MR. PARNELL: I appreciate the question, and that is  
21 a legitimate concern.

22 Certainly, I served here, as you remember, as the  
23 Director of Agriculture, and I think met with you on a regular  
24 basis --

25 SENATOR PETRIS: Right.

26 MR. PARNELL: -- to try to implement in an effective  
27 way SB 950, and had continued to do that during my federal  
28 service as Deputy Secretary of Agriculture. Tried to make some



1 sense out of what EPA was doing versus USDA.

2 And George Soares, obviously, and the law firm has a  
3 number of agricultural clients. And if called upon, I may give  
4 advice to them with respect to the directions that we're going,  
5 but certainly in no way would it compromise my judgment.

6 SENATOR PETRIS: They have chemical companies also,  
7 don't they?

8 MR. PARNELL: They represent some chemical companies.

9 SENATOR PETRIS: Manufacturers of pesticides?

10 MR. PARNELL: That's correct.

11 SENATOR PETRIS: I remember. As a matter of fact,  
12 maybe it's part of your testimony on this same subject. You  
13 said you agreed, and as long as you were around, you were going  
14 to enforce the law to the best of your ability and make sure  
15 these bad things don't happen.

16 But you didn't think any particular solution that I  
17 had in the form of a statute was the best way to go. It's  
18 better to do it with more flexibility administratively and all  
19 that.

20 And I said, "Well, that's okay, but for all I know,  
21 you may wind up in Washington, and here we are with a weak law  
22 because we were counting on you to do the right thing."

23 And then you did go to Washington. What's your  
24 present view of that? Don't we need tough statutes to take care  
25 of these, regardless of who's in office and who's administering  
26 them?

27 MR. PARNELL: I think we do need tough statutes, and  
28 I believe at the federal level -- you've done wonderful things





1 at the state level. At the federal level, they'll be revisiting  
2 FIFRA as they approach the activities of this Congress.

3 And I wrote President Bush's approach to  
4 reauthorization of FIFRA while I was in Washington, that  
5 basically strengthened cancellation procedures, a more truncated  
6 process and some of those things that I think you were  
7 advocating for, just so that we could make sense. And not to  
8 the extent that we would totally neglect to recognize the  
9 importance, and you mentioned it here in this hearing, Senator,  
10 the importance of agriculture, but to defend them not to a  
11 fault. Let's make sure that what we're doing is right, correct,  
12 and it serves the best interests of all of the people all of the  
13 time.

14 And it was in that spirit that we were looking for  
15 some changes in FIFRA back in 1989 and 1990.

16 SENATOR PETRIS: Well, I appreciate your  
17 contributions.

18 My quarrel was never really with the growers,  
19 although they thought so. My plea to them was, get out of my  
20 way and let me go after the chemical companies. But they were  
21 permitting themselves to be used as shields by the chemical  
22 companies who convinced them that they couldn't live without the  
23 chemical companies, which I still think is an erroneous  
24 assertion on their part.

25 Those are the only questions I had.

26 SENATOR BEVERLY: Any further questions from Members?

27 SENATOR AYALA: Only the question I asked Mr. Calhoun  
28 on the good Mayor trying to shift the responsibility to the



1 recipients, not the people who create the problem.

2 What is your position on that?

3 MR. PARNELL: Well, you know that in the SIP that we  
4 presented, there are some elements of that Riordan proposal.

5 I will say that as the SIP is reviewed, and as they  
6 get into the regulatory procedure, Senator Ayala, there'll have  
7 to be a cost effectiveness analysis and a feasibility analysis.

8 Basically, the whole socioeconomic analysis will have  
9 to be made, and I think at that time, it'll be shown for what it  
10 is.

11 SENATOR AYALA: It seems to me that the inland part  
12 of Southern Cal, they're downstream polluters. They pollute as  
13 well, but the main source of pollution is Orange and Los Angeles  
14 Counties. And to treat the symptoms instead of the causes, the  
15 Mayor's off base, as far as I'm concerned.

16 MR. PARNELL: We fully have appreciate for your point  
17 of view, and I'll be anxiously awaiting this regulatory process  
18 to move forward so that it can be impacted.

19 SENATOR AYALA: Being involved with agriculture as  
20 you have, I'm sure you're familiar with the survey by the Farm  
21 Bureau about the crops, and the loss due to the ozone.

22 MR. PARNELL: Sure.

23 SENATOR AYALA: And ARB's not doing anything about  
24 that at all, are they?

25 MR. PARNELL: Well, I'm unclear as to what's  
26 happening. I think that there are some arguments that have to  
27 be looked at contained in the Farm Bureau, which basically speak  
28 to the issue of, if we don't grow agricultural commodities in a



1 particular area, and the sequestration of CO<sub>2</sub>, that growing  
2 products, growing crops, may in fact really contribute to the  
3 reduction of ozone.

4 And I don't think that's been fairly looked at. It  
5 will be looked at, I'm certain, over time to determine whether  
6 or not there should be an appropriate offset given to those  
7 kinds of activities.

8 SENATOR AYALA: The growth, obviously, has  
9 contributed, because there are more automobiles. And I was told  
10 a long time ago that the automobile emissions are the probably  
11 the worst polluters than anything else we have.

12 But that's controlled, and that's by Washington,  
13 isn't it, the problem of automobile emissions are the  
14 responsibility of -- is it our responsibility here at the ARB?

15 MR. PARNELL: Yes. In the Clean Air Act, it gives us  
16 great responsibility, and that's part of what the SIP does. We  
17 have done historically in the past a lot to improve emissions.  
18 In fact, it's been remarkable the amount of progress that's been  
19 made.

20 But clearly, it is the responsibility of the regional  
21 air control boards, and our own, to continue the reduction. The  
22 only exemption we have is farm equipment, and those issues like  
23 ships and trains which come interstate that are controlled by  
24 the federal government.

25 SENATOR AYALA: Somebody mentioned the fact that in  
26 spite of the fact that we're growing, the air is much cleaner  
27 now than it was ten years ago, and we hope to continue to  
28 improve it. That's only because, I think, the automobile





emissions have been controlled at the factory in Detroit, not in Southern Cal.

MR. PARNELL: That's true, it does -- most of the remedies are put on, Senator, at the factory, but mandated by the California and the California Air Resources Board.

SENATOR AYALA: Thank you.

SENATOR BEVERLY: Is there anyone here who wishes to testify in favor of the appointment? Is there any opposition? Apparently not.

What's the pleasure of the Committee?

SENATOR AYALA: Move the nomination.

SENATOR BEVERLY: We have a motion to recommend confirmation. Call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Lockyer.

SENATOR BEVERLY: We will leave the roll open for Senator Lockyer.

Congratulations.

MR. PARNELL: Thank you very much. I appreciate it.

[Thereupon the final vote for  
confirmation was 5-0, as Senator



1 Lockyer's aye vote was added

2 pursuant to Senate Rule 28.7]

3 SENATOR BEVERLY: Next in order, Doug E. Vagim.

4 MR. VAGIM: Thank you, Senator Beverly. For the  
5 record, my name is Doug Vagim. I'm a Supervisor from Fresno  
6 County. I have been a Supervisor there since 1989. I'm in my  
7 second term as Supervisor.

8 And I want to, before I get too much further, thank  
9 my family for being here, my wife and daughter, and my  
10 daughter's on a semester break from a year-around school and  
11 learning the Legislature first-hand.

12 I served as the air basin authority when I served --  
13 when I began my term as Supervisor, which was loosely coupled  
14 body of eight counties in the San Joaquin Valley before the  
15 formation of a unified district.

16 During the year of 1990-91, the eight counties took  
17 the task of, under the Health and Safety Code, to form a unified  
18 control district.

19 In addition, there was legislation being moved  
20 through the Legislature that included Senator McCorquodale, and  
21 now, of course, Senator Costa, then Assemblyman Costa's  
22 legislation. And I was working directly with Assemblyman Costa  
23 in the amendments to SB 124, which were successful. And that  
24 amendment, which basically modified the unified district  
25 concept, is what the San Joaquin Valley District is running  
26 under now.

27 The achievements the district has wrought are immense  
28 when you consider the fact that the district is the largest air



1 basin in the United States representing something close to 25  
2 percent of the California land mass, and nearly 16 percent of  
3 its population base.

4 In 1992, thereabouts, then Assemblyman Costa moved a  
5 bill that was eventually passed by the Legislature, to add two  
6 more positions on the California Air Resources Board, one of  
7 them being the San Joaquin Valley Unified Air Pollution Control  
8 District.

9 I acted as the Valley District's Chair during the  
10 formation year, which was what I would always characterize as  
11 tantamount to the unification of Eastern Europe. It was a very  
12 difficult task with eight different staffs, eight different  
13 salary resolutions, and MOUs of many different employees, and we  
14 were able, with our good staff, put that district together, and  
15 I believe have one of the best districts in the state.

16 I was able to achieve, with competition amongst my  
17 colleagues of the Unified District, the appointment to the  
18 California Air Resources Board, and have been there since, of  
19 course, February, 1993.

20 Since then, the relationship between district and ARB  
21 is something that has what I would consider taken a lot of the  
22 cloud off of exactly what we do here in California as far as  
23 trying to achieve clean air. So much is done on the stationary  
24 sources through the district, but when you add the mobile  
25 sources, when you add the consumer products, when you add the  
26 overall responsibility the state has to answer to the federal  
27 government and its Clean Air Acts, you see the relationship, and  
28 it is a very important relationship that I think should be





1 maintained. Local control of air is very important, but  
2 oversight by the state is equally important.

3 I have been able to take back, both to the district  
4 and from the district back to ARB, input and offered my  
5 observations and input during discussions of regulations, and  
6 also discussions of moderation from my district when it came to  
7 issues of just who has control here.

8 We've done a lot of what I consider important  
9 informational items that are going to be needed in the future,  
10 which basically are giving us better science to clean up air.  
11 Of course, those have been through our study models that the San  
12 Joaquin Valley District, with the help of the state, federal  
13 government, and various agencies within the federal government,  
14 including the Department of Defense, have undertaken. A lot of  
15 private energy into this also, and that's both the ozone model  
16 study that the Valley District has sponsored, along with CARB,  
17 and now the ongoing and beginning of the -- we're in the  
18 fundraising stage and also doing some work right now in the PM10  
19 model for the San Joaquin Valley District. And that'll be a \$23  
20 million project. The ozone project was around \$16 million  
21 project.

22 That will help the Valley District understand its  
23 PM10 problems better and how to solve them, and also as well as  
24 the ozone model was able to give us the tools to be part of the  
25 State Implementation Plan, and we're able to tweak our plan to  
26 off to the state a better alternative than something without  
27 good science.

28 So with that, Senator Beverly, I will end by saying



1 that my stint of just under one year on the Air Resources Board  
2 has been a very rewarding one, and I feel that it is something  
3 that the Valley has appreciated, and has, I believe, been able  
4 to see how important the seat is for the Valley District to have  
5 that position.

6 Thank you.

7 SENATOR BEVERLY: Thank you.

8 Any questions of the nominee? Senator Petris.

9 SENATOR PETRIS: Thank you.

10 My information is that the ARB isn't carrying out the  
11 statutory mandate to have pollution reduced by five percent in  
12 each district over a three-year period. The State Board is  
13 supposed to prod them and make sure they do it. Unless I'm  
14 misinformed, they're just not doing it.

15 Can you tell us why?

16 MR. VAGIM: Well, I can speak first-hand from the  
17 Valley District.

18 We had by obligation, as you well know, to file the  
19 State Implementation Plan by November, and the Valley District  
20 was one of the districts that met the criteria to submit a plan.  
21 And we submitted our plan, which addressed our serious level of  
22 pollution under the federal standards.

23 In addition, there's a rate of progress plan that you  
24 need to file, and was filed with the SIP.

25 I believe that the Valley District has met in its  
26 actual implemented rules the five percent reduction on the sheer  
27 evidence that when you look at the sheer number of ozone days  
28 that have been not exceeded in this last year, we are way down



1 from where we were just three years ago.

2 And I think you can say that all over the State of  
3 California; the exceedences are less now than they were just  
4 three years ago.

5 SENATOR PETRIS: In all the districts?

6 MR. VAGIM: In all the districts.

7 SENATOR PETRIS: Is that due to the use of the  
8 following plan by all the districts, or is it some other reason?

9 MR. VAGIM: Well, I think it's a combination.  
10 There's a combination of putting together a good program on the  
11 stationary sources, but in addition the program that the State  
12 ARB has put together in its vehicle program, and in addition to  
13 its other consumer products, and what-have you. These all have  
14 addressed a little bit.

15 You know, air emission's a bubble that's fixed. And  
16 if you're going to clean it up, you're going to clean it up  
17 within that bubble, so every little bit helps. And I think ARB  
18 has taken that tact and so have the districts.

19 SENATOR PETRIS: Do you think they're on line and on  
20 track?

21 MR. VAGIM: I think we're on track. And I think the  
22 proof of the pudding's going to come when we get closer to those  
23 dates and we actually see our monitoring stations show us actual  
24 results, because that's the only truth that we see is what the  
25 monitoring stations are going to show us.

26 And basically, they have shown to date less days of  
27 exceedence, just going back one or two years.

28 SENATOR PETRIS: Part of the SIP calls for





1 eliminating about 75,000 high emission vehicles. In what period  
2 of time? Is that the three-year cycle?

3 MR. VAGIM: Well, the 75,000 was a kick-in by the  
4 year 2010, which was going to be an annual reduction.

5 Now, Senator, I've had a problem with that from the  
6 very beginning, because I don't believe that's going to be  
7 easily achievable.

8 First of all, I have a social problem as a  
9 Supervisor. I have a lot of folk in my district who drive old  
10 cars, and I want to know what price they're going to end up  
11 paying driving newer cars to get to an air model achievement.

12 We need to get to that point of getting them into  
13 cleaner cars, but the public will end up paying for that program  
14 to the tune of, if it's the 75,000 car in South Coast alone,  
15 somewhere in the neighborhood of, if you average \$100 -- I mean,  
16 it's going to be a \$500 average someone has come up with;  
17 someone is saying more. If you bait it, it's going to go up to  
18 a thousand. Everytime you try to give incentives, it's going to  
19 go up, the price is going to go up, because the guy's going to  
20 say, "I've got an old car. How much you want to get that  
21 pollution credit for it?"

22 So, we may end up spending a lot of money in that  
23 program needlessly, when we could actually force -- and I was  
24 more in favor of keeping a little bit more pressure on the  
25 industry, on technological issues.

26 And that's why the State Implementation Plan was not  
27 -- we didn't throw away those emissions that we felt that we  
28 were going to get out of the 75,000 vehicles. We put them in



1 the front burner to say the test now is going to be on the  
2 industries. If you can't find them by a certain date, the  
3 technological answers are going to kick in, and I feel it's a  
4 sound way to do it.

5 SENATOR PETRIS: Are they ready to go, the  
6 technological answers?

7 MR. VAGIM: The last vestige that was left is in the  
8 front burner where industry is going to come back to us and tell  
9 us how they're going to do it, or prove to us that 75,000 cars  
10 can be achievable and is actually going to be the quantifiable  
11 emission reduction. That's the question that's been left.

12 But remember, 2010 is the kick-in date, and we have  
13 some time to take a look at that before. And we are going to be  
14 monitoring that very closely.

15 SENATOR PETRIS: I thought the idea was to buy them,  
16 but we don't have the money. We were going to buy them and get  
17 them off the road.

18 MR. VAGIM: It's a very expensive program when you  
19 look at per vehicle emission reduction.

20 SENATOR PETRIS: That was the thought of that when  
21 they created the plan.

22 MR. VAGIM: Well, no, those were discussed. And I  
23 raised a lot of questions about that.

24 And we were going to bury the technological points in  
25 the very back part of the plan, which was not ever -- never  
26 needed to be raised because they were our very technological  
27 emission reduction part of the plan.

28 It's been brought to the front burner on our plan.



1 Industry's been put on notice: you've said that you could do  
2 this by crushing vehicles. We're going to give you a shot at  
3 it, but you also have to look at the total emissions through  
4 technology. If it looks like one of us is not going to be  
5 right, and if we're right, you're going to be polishing up your  
6 apple on technological.

7 Of course, those are alternative fuel vehicles, more  
8 zero emission vehicles, and what-have you.

9 SENATOR PETRIS: We're talking about old clunkers;  
10 aren't we?

11 MR. VAGIM: Yes, but in place of that --

12 SENATOR PETRIS: They don't have any control over  
13 those. What are they going to do, recall them after 15 years?

14 MR. VAGIM: Well, what they're trying to say is that  
15 they're going to buy them from those folks by offering the price  
16 better than what they could sell them to their neighbor, or to a  
17 junk dealer.

18 SENATOR PETRIS: And who's going to buy them?

19 MR. VAGIM: The districts will buy them through some  
20 source which is contracting out to some private source. Like,  
21 for example, in the Valley District, we contract with a  
22 consortium of local agencies in the south part of our valley in  
23 Kern County. It's called Project Clean Air, and they have a  
24 target of so many hundred cars per year, and they've been paying  
25 an average of \$500 a car.

26 Frankly, Senator, I don't think it's that all  
27 effective of a program.

28 SENATOR PETRIS: How does it work financially? Do





1 they strip the cars and sell the parts and make a profit?

2 MR. VAGIM: Well, that's one of the questions I want  
3 to ask, because I know a couple guys in the junk business. And  
4 some of the guys who are bringing cars into them make a lot of  
5 money off of that because they get parts, and then they resell  
6 the parts, and they multiply more than what they sold them -- or  
7 what they bought them for.

8 I believe that we need to audit that very carefully,  
9 because I think some guys could be making a windfall out of  
10 that, and we don't know it. And that's one of the new programs,  
11 when we were rushed to clean up air, that we rush into, and  
12 somebody gets a big windfall profit up front, and then it dawns  
13 on us: we should have modified this going in so someone  
14 wouldn't make windfall profits, and at the same time not really  
15 doing effective air emission or air pollution reduction.

16 So, I think we need to take a closer look at that and  
17 find out exactly how much money is being made by the folk who  
18 are selling them; in addition, how much is being made of that  
19 after market for a guy who crushes the car.

20 The theory is, get an old vehicle off the road, you  
21 save a certain amount of emissions. Get a whole bunch of  
22 vehicles off the road, you even save more emissions.

23 My problem socially is, as a Supervisor, is that I  
24 got folk who can't afford to go buy an '84 or newer car. But  
25 the functionality of that older car works just fine for them.  
26 It gets them to work; it gets their kids to school; it gets them  
27 in the store to buy their groceries.

28 Now, if you're going to say to them, "You're evil for



1 driving that older car, and you've got to go spend \$4,000 more  
2 to go buy a new car," when you could barely afford the one  
3 you're in, and we're going to give them \$500 for that older car,  
4 what's next? Are we going to give them a thousand? Give them  
5 2,000? Give them 3,000? And where are we going to get that  
6 money?

7 SENATOR PETRIS: That's a good question, but I think  
8 we have to go back to the basic reason for it.

9 It's tough on them to rearrange their lives in order  
10 to get transportation, and that's a cost of being poor, I  
11 guess. We dump on the poor all the time anyway.

12 But in the meantime, they're poisoning the rest of  
13 us. That's the bottom line. The bottom line is poison coming  
14 out of those vehicles. A lot of old people dying because of air  
15 pollution. That's still going on. It aggravates heart disease.  
16 Medical journals are full of articles over the years, you know,  
17 on the impact on health.

18 It seems to me every time a vehicle is taken off the  
19 road, that's a big victory.

20 MR. VAGIM: Well, there's no doubt about it, that  
21 it's a very important part of the plan. But to make it part of  
22 the mandate, to make it part of your solution, your absolute  
23 solution, I think, can have --

24 SENATOR PETRIS: Create other problems.

25 MR. CALHOUN: Create other problems.

26 SENATOR PETRIS: Suppose we solved that part of the  
27 problem, and the 75,000 -- I don't know how they arrived at this  
28 number, but let's say that the number they picked is actually



1 removed.

2 How much of an impact would that have on air  
3 pollution?

4 MR. VAGIM: Well, it is supposed -- I forget the  
5 actual numbers, Senator, but individually, of course, when you  
6 have VOCs and you have NO<sub>x</sub>, and of course you have a better  
7 emission system on evaporative, where the car's just standing,  
8 and et cetera, it adds up to micro grams per car per day.

9 But if you take it across the spectrum, you're  
10 getting into tons per day of reduction. Frankly, I don't know  
11 if it was 10 tons or 20 tons across the spectrum on the VOCs and  
12 NO<sub>x</sub>, and et cetera, but it's in that range.

13 Technological changes can actually improve that even  
14 greater if we push technological issues. CARB has specialized,  
15 and one of the areas that I have watched and learned to much  
16 what I would consider pleasure is to see CARB's hands on on  
17 technological review to force industry, to challenge industry,  
18 to come forward with technological changes for the California  
19 marketplace. And it's worked.

20 SENATOR PETRIS: Are you talking about new cars?

21 MR. VAGIM: New cars, mainly new cars.

22 One of the issues that we're concerned about as a  
23 Board is how do we maybe do things like retrofit and start  
24 giving credit for retrofit, because, you know, you can immediate  
25 emission reductions on retrofits if you offer them at a price  
26 where people will want to do it. There's a lot of folk out  
27 there who have old cars who can't afford and will maybe do some  
28 retrofitting if it was effective and cost effective.





1           SENATOR PETRIS: I think we need education, too.

2 Most people don't realize that an idling car does more polluting  
3 than a moving car.

4           MR. VAGIM: That's right.

5           SENATOR PETRIS: And we've all been behind a guy in  
6 the right lane, right at the intersection, who doesn't make a  
7 right turn on a red because he doesn't know that it pollutes you  
8 worse, and he doesn't know that you have a right to make a right  
9 turn when there's no traffic coming that way.

10           That's a very big source of the idling cars. It  
11 isn't just stopping in the inner lane, waiting for the fellow  
12 way up there in front. It's the one in front on the right side  
13 that causes the problem.

14           Maybe we ought to get hold of DMV, put that in the  
15 exam.

16           MR. VAGIM: Out of turn.

17           SENATOR PETRIS: We have to try it on all fronts.

18           MR. VAGIM: That's right.

19           SENATOR PETRIS: Now, would you agree with Mr.  
20 Calhoun that the feds will approve the SIP?

21           MR. VAGIM: I think the State SIP, State  
22 Implementation Plan to meet the federal Clean Air Act, I think  
23 California's State Implementation Plan, being the only state  
24 that met the timetable, which I think we all should be proud of,  
25 has sufficient implementable rules, and also goals that we set  
26 out in our plan, to achieve clean air to meet the federal  
27 standard, and that was what that plan did.

28           It didn't meet the state standard, and remember, the



1 state does not have a deadline on any particular date to meet  
2 its standards, but it met the fed standard, in a way that I  
3 think will address those who have the worst problems first with  
4 the plan basically having to plan ahead to meet them by 2010,  
5 which is really where South Coast is. And the rest of us, we're  
6 a serious valley, 1997 is what we will have to meet to meet  
7 attainment. Sacramento had to shift theirs to what's called an  
8 extreme because they couldn't make their goals.

9 We feel that we have our hands on to meet the federal  
10 attainment.

11 SENATOR PETRIS: I assume that your engineers, having  
12 developed the plan on a technological basis, would assure you  
13 that, yes, this meets federal standards.

14 But there are people who don't want us to meet  
15 federal standards. They're inviting a takeover by the feds.  
16 There are people who'd much rather have us go in that direction.

17 MR. VAGIM: Well, based on what the Federal  
18 Implementation Plan looked like, I don't think anybody would  
19 want the federal government to take us over, because that was a  
20 pretty hellacious plan.

21 And we showed that we could put a plan together that  
22 met the federal standards, federal attainment levels, without  
23 doing the things that the feds had in their Federal  
24 Implementation Plan.

25 Remember, the whole -- I believe the whole SIP in  
26 California, anyway, was driven by the South Coast model, because  
27 we had the worst problem in the South Coast. So, we had to go  
28 address South Coast, and some issues spilled over to the rest of



1 California.

2 The automobile program, the low emission vehicle  
3 program, even though it's a benefit to all of us, really  
4 addressed the need to get Southern California's South Coast  
5 Basin under those levels to meet federal standards. We had to  
6 take some radical steps there to do that.

7 SENATOR PETRIS: If you tackle the worst district,  
8 it'll be good for all the rest.

9 MR. VAGIM: That's correct.

10 SENATOR PETRIS: Thanks.

11 CHAIRMAN LOCKYER: Senator Lewis.

12 SENATOR LEWIS: Back on the clunker question for a  
13 second, have you ever had a chance to review the success or lack  
14 thereof of the Unical Oil scrap program in the South Coast  
15 District?

16 MR. VAGIM: Well, I've heard of the program. They've  
17 come and testified at CARB on the success of their program. And  
18 San Diego has, evidently, a very successful program also.

19 That is a willing party type of a venue where the  
20 industry itself sponsored that. And that is fine. It is a very  
21 important tool to me.

22 My concern is, when we as regulatory folk and those  
23 who want to see that program even pushed harder, go to the  
24 Legislature and start mandating it, there are social  
25 consequences that I see, that the folk who cannot afford these  
26 newer cars are going to be levered out of cars and  
27 transportation. And I think we need to concerns ourselves with  
28 that before we start driving the marketplace on cars that are





1 going to the bone pile anyway.

2 SENATOR LEWIS: I understand your concern.

3 Are you familiar with the Reg. 15, mandatory ride  
4 sharing program they have in the South Coast District?

5 MR. VAGIM: No, I'm sorry. Reg. 15?

6 SENATOR LEWIS: Reg. 15. That's the mandatory ride  
7 sharing, or it's to increase the vehicle ridership.

8 MR. VAGIM: Right. Well, we all have that in our  
9 plans. We have to reach 1.5 average per rush hour by the year  
10 1999, and we're all on track with that.

11 Unfortunately, I don't think a lot of the --  
12 particularly Valley communities, are ready for it because we  
13 haven't been urbanized enough to have mass transit. But it's  
14 something that we need to work on, and we've been preaching up  
15 and down the Valley: we've got to get our act together to be  
16 able to meet that particular threshold.

17 SENATOR LEWIS: Would you be surprised if I told you  
18 that in comparing the Unical scrap program to the South Coast  
19 Reg. 15 program, that the scrap program was 30 times as cost  
20 effective in terms of reducing pollutants per dollar spent?

21 MR. VAGIM: Is that on actual ridership on the  
22 transportation plan?

23 SENATOR LEWIS: Yes.

24 MR. VAGIM: Not actuarially, but actual. I believe  
25 that, because I spoke --

26 SENATOR LEWIS: That's using the South Coast Air  
27 Quality Management District's own figures in analyzing the  
28 success of their Reg. 15 program.



1 MR. VAGIM: Were they a success, right, which is the  
2 actual.

3 Look, folk in California, at least in most of  
4 California -- there are spots in the Bay Area and et cetera that  
5 have now long since adopted for mass transit -- and we need to  
6 start getting better understanding of what makes the rest of  
7 California start being attracted to that.

8 When Southern California had its earthquake, it did  
9 use the trains. When the roads were fixed, they got off the  
10 trains.

11 We need to figure out what attracts people to those  
12 systems, and also what attracts people to ride sharing. Ride  
13 sharing is troubling to some, because it's not ride sharing  
14 itself, it's who you share the ride with. And some folks, you  
15 know, have their own group of folks that they want to, and it  
16 doesn't work out sometimes, so they end up all taking their own  
17 cars.

18 We have what I consider to be a fairly aggressive  
19 transportation plan in the Valley that is going to sit down with  
20 industries with 100 or more and get them into a plan that  
21 addresses the transportation mitigation plan. And we want to  
22 see that ridership increased.

23 Californians have a love affair with their cars. I  
24 don't think anyone will doubt that.

25 But I think we need some incentives to get our bus  
26 systems from giving folk who don't have cars a ride, to in  
27 addition to give those who have a car an option to use the bus.

28 Right now, the system is levered under federal law to



1 give those who don't have rides a bus to use. We need people  
2 who have options to take a car, an attraction to use the bus.

3 Right now, that isn't being done in most communities  
4 in California.

5 So, those are some of the issues that need to be  
6 addressed by all of us. The Legislature needs to be at this to  
7 help us, as regulatory folk. We'll give you the plans, but we  
8 need some help on getting folk to help understand what they need  
9 to do to implement this.

10 SENATOR LEWIS: If the Reg. 15 in the South Coast  
11 District is costing the private sector several hundred million  
12 dollars a year to comply with, and if the scrap program is 30  
13 times as cost effective, wouldn't that suggest that it might be  
14 more effective to offer businesses the ability to participate in  
15 the scrap program, in lieu of these mandates that aren't  
16 effective?

17 MR. VAGIM: And the way it works, the way I  
18 understand in the South Coast, those are industry-generated  
19 funds that are bringing down what -- off of every scrapped car,  
20 a level of emission, and they're being able to take credit for  
21 that, for their own industry. And that's a market-driven  
22 incentive for that particular industry.

23 My concern is that California has a total populace.  
24 Forcing that as a mandate, we begin now, as regulatory folk, to  
25 start discussing social issues, particularly those who can  
26 afford it the least. And that's something we've got to be very  
27 careful as we address this.

28 CHAIRMAN LOCKYER: What were the principle defects in





1 the FIP that you think were corrected by the SIP?

2 MR. VAGIM: Well, I think what I was trying to get  
3 into detail that I can't --

4 CHAIRMAN LOCKYER: Just in concept.

5 MR. VAGIM: There were some proposed regulations in  
6 the FIP that were almost undoable. They created an environment  
7 of cost that was estimated by the consultants that CARB hired to  
8 do a review, somewhere on the order of billions of dollars more  
9 in solving the same problem that our SIP now accomplishes.

10 And we feel it is adoptable and doable to meet the  
11 federal standards.

12 CHAIRMAN LOCKYER: Any specific --

13 MR. VAGIM: Any specific measure? Yeah, one of the  
14 measures that they put in the FIP plan is a no drive day. In  
15 other words, you got a car, you've got to park it. No matter if  
16 you got to go to the market or the doctor, I guess you've got to  
17 get permission from your air regulator to use that car, or  
18 something. I don't how they ever planned to use it, but that's  
19 one of the issues.

20 CHAIRMAN LOCKYER: Any others?

21 MR. VAGIM: That's the one that stands out.

22 I think there were some other what I would consider  
23 to be personal home issues, such as consumer marketplace. For  
24 example, consumer products, they were talking about wiping them  
25 off the face of the earth. Not have to go to hair spray in the  
26 last ten days. Those folks said they'd be spraying water to  
27 meet the federal standards.

28 Now, we put a plan out there that they don't like



1 either in our SIP that they say they can't meet. Well, we said  
2 you've got enough time --

3 CHAIRMAN LOCKYER: Who's the "they"?

4 MR. VAGIM: The consumer product folk, which means  
5 that they have to reduce their VOCs by 85 percent of what they  
6 are today. They said they will be spraying water if you make  
7 them reduce it by 85 percent.

8 We said, look, you've got a threshold to meet that  
9 you're going to go down 30 percent in the next three or four  
10 years, which they've accepted, and have another tier which  
11 they're willing to and they've accept. Now the last one is the  
12 one that they fall out of the chair on.

13 We said that you have to -- CARB said you have  
14 sufficient time to meet this test. We've got to push you.  
15 We've got to keep pushing you. If you don't -- maybe there's  
16 some upstart genius out there in the university, or some old  
17 salt out at one of those aerospace guys that can come out and  
18 say, "I can do this." How do you know that unless you push it?

19 And I think what we can pride ourselves in what CARB  
20 has done over these years.

21 CHAIRMAN LOCKYER: I do, too.

22 You're willing to accept that responsibility to be  
23 kind of the official nudger?

24 MR. VAGIM: Absolutely. I think it's one of the  
25 roles that CARB should have.

26 SENATOR PETRIS: Mr. Chairman, I don't think we  
27 should abandon the park your car idea. It's been used in other  
28 places, and it'll be a big boost to public transit.



1           If public transit knows X percent of the population's  
2 not going to be driving today, they're going to provide more  
3 buses and trains, and so forth.

4           I know in Athens, Greece, which is a very bad  
5 polluted city, they go by the license plate number, and you  
6 drive on alternate days. Of course, those who have the money  
7 get another plate for another car, but that's a limited number,  
8 you know. They can't all go out and buy another car for an even  
9 number as opposed to an odd.

10          And in Rome, they drew a circle around the city, and  
11 they made you park outside the circle and take some other means  
12 to get the rest of the way into town for your shopping or your  
13 work. that seemed to work out pretty well.

14          So, there are, you know, other alternatives that we  
15 really ought to be pursuing, even if it means doing what you  
16 said, and that is, keep pushing, and pushing, and pushing, and  
17 sooner or later, the conduct will change and we'll make more  
18 progress.

19          MR. VAGIM: If the goal is to get folk into mass  
20 transportation, I believe we need to achieve that. If we get  
21 folk out of cars, because even electric vehicles are not going  
22 to solve your traffic congestion. If you have a lot of ZEVs  
23 running around, they're still crowded and doing funny turns,  
24 you're still going to cause congestion.

25          We need to figure out what attracts folk to the  
26 transportation systems of California and start working on those.

27          I'm the Chairman of the San Joaquin Valley Rail  
28 Steering Committee, which is a 12-county consortium from L.A.





1 County, to Contra Costa, Alameda, and San Francisco, and all 8  
2 counties in between. We have been batting ourselves over the  
3 head, trying to figure out why CalTrans doesn't understand that  
4 a two-rail line between the Valley and Sacramento is going to  
5 increase a lot more ridership and get people out of their cars.  
6 But they have been spending about five or six years, doing  
7 study, after study, after study.

8 But that is a conjunctive thing with air quality.  
9 They go hand in hand.

10 SENATOR PETRIS: They're too busy trying to rid of  
11 the BCDC. That's a local thing.

12 Thank you.

13 CHAIRMAN LOCKYER: Well, just to interpose, safe,  
14 clean convenient, and reliable service, and people will use it.  
15 None of the transit systems are adequate by those tests.

16 MR. VAGIM: I agree.

17 CHAIRMAN LOCKYER: There was some anxiety expressed  
18 with respect to the SIP and port impacts that seemed to be  
19 severe and unnecessary.

20 Do you happen to recall whether those constraints  
21 were relaxed or improved with the SIP?

22 MR. VAGIM: Under the SIP, we are, I believe, of  
23 mind to allow South Coast and particularly Ventura County to  
24 move the channel, move the shipping lanes so they didn't come in  
25 so close to the shore, and that solved a lot of the problems.

26 The feds wanted to crank down on doing a whole more  
27 onerous way. So, we were able to address that in the SIP.

28 CHAIRMAN LOCKYER: Are there other questions?



1           Is there anyone present who would wish to comment? I  
2 note Assemblyman-Senate-Justice-Mister Zenovich, who had  
3 indicated support, so you don't need to do more than that.

4           MR. ZENOVICH: May I approach the bench, your Honor?

5           I just want to state that I've known Supervisor Vagim  
6 for a long time. I have a letter of support in the record.

7           He was very much involved under the McCorquodale-  
8 Costa legislation, in forming the district in the Central Valley  
9 in the formative stages, and I think he knows enough about it to  
10 do an adequate job on the ARB.

11          CHAIRMAN LOCKYER: Nice to know you're adequate.

12                           [Laughter.]

13          CHAIRMAN LOCKYER: Especially when your friends  
14 describe you that way.

15          Do we have a motion by anyone present?

16          SENATOR BEVERLY: Move confirmation.

17          CHAIRMAN LOCKYER: Senator Beverly moves  
18 confirmation.

19          Call the roll.

20          SECRETARY WEBB: Senator Ayala.

21          SENATOR AYALA: Aye.

22          SECRETARY WEBB: Ayala Aye. Senator Lewis.

23          SENATOR LEWIS: Aye.

24          SECRETARY WEBB: Lewis Aye. Senator Petris.

25          SENATOR PETRIS: Aye.

26          SECRETARY WEBB: Petris Aye. Senator Beverly.

27          SENATOR BEVERLY: Aye.

28          SECRETARY WEBB: Beverly Aye. Senator Lockyer.



1 CHAIRMAN LOCKYER: Aye.

2 SECRETARY WEBB: Lockyer Aye. Five to zero.

3 MR. VAGIM: Thank you very much.

4 CHAIRMAN LOCKYER: Keep up the good work.

5 If there's no objection, I'd like to add myself as an  
6 aye to Mr. Parnell so there's no miscues on the Floor and report  
7 it as five to zero.

8 [Thereupon this portion of the  
9 Senate Rules Committee hearing  
10 was terminated at approximately  
11 5:42 P.M.]

12 --oo0oo--  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28





CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 27<sup>th</sup> day of January, 1995.

  
EVELYN J. MIZAK  
Shorthand Reporter





**269-R**

Additional copies of this publication may be purchased for \$5.25 per copy  
**plus 7.75% California sales tax.**

Senate Publications  
1020 N Street, Room B-53  
Sacramento, CA 95814  
(916) 327-2155

Make checks payable to SENATE RULES COMMITTEE.  
**Please include Stock Number 269-R when ordering.**

L500  
R9  
1995  
no. 6

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 30, 1995  
3:05 P.M.

DOCUMENTS DEPT.

MAR 3 1995

SAN FRANCISCO  
PUBLIC LIBRARY





1 SENATE RULES COMMITTEE  
2 STATE OF CALIFORNIA  
3  
4  
5  
6  
7

8 HEARING  
9  
10  
11

12 STATE CAPITOL  
13 ROOM 113  
14 SACRAMENTO, CALIFORNIA  
15  
16  
17

18 MONDAY, JANUARY 30, 1995  
19 3:05 P.M.  
20  
21  
22  
23  
24

25 Reported by:  
26

27 Evelyn J. Mizak  
28 Shorthand Reporter



APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ALFREDO C. BAUTISTA, Member  
Youthful Offender Parole Board

ROBYN A. BLACK, Member  
Industrial Welfare Commission

SENATOR JIM COSTA

JOHN W. GILLIS, Member  
Board of Prison Terms

SENATOR JIM NIELSEN, Member  
Board of Prison Terms

IRENE V. RAYMUNDO, Member  
Youthful Offender Parole Board



INDEXPage

Proceedings . . . . . 1

Governor's Appointees:

BRENDA PREMO, Director  
Department of Rehabilitation . . . . . 1

Statement of Intent by CHAIRMAN LOCKYER . . . . . 1

Motion to Confirm . . . . . 1

Committee Action . . . . . 1

ALFREDO C. BAUTISTA, Member  
Youthful Offender Parole Board . . . . . 2

## Questions by CHAIRMAN LOCKYER re:

Toughest Decision while Serving on Board . . . . . 2

Coping with Changes in Type of Wards . . . . . 3

Decisions Made at Early Stage of  
Ward's Incarceration . . . . . 4

Initial Determinations . . . . . 5

Predictions . . . . . 6

Any Particular Needs in Terms of  
Available Treatment or Training Programs . . . . . 7

## Questions by SENATOR LEWIS re:

Overcrowding and Decision Making . . . . . 9

Criteria Used in Making Decision to Release . . . . . 10

## Questions by SENATOR AYALA re:

Handling Overcrowded Conditions at  
Youth Authority . . . . . 11

Early Release of Inmates . . . . . 11

How is Department Handling Problems of  
Overcrowding . . . . . 12

Department's Plans for More Institutions . . . . . 14





INDEX (Continued)

Questions by CHAIRMAN LOCKYER re:

Indeterminate Sentencing System Possibly  
resulting in Racially Biased Determinations . . . 15

Process Used to Determine Parole  
Consideration Date . . . . . 17

Adoption of Possible Parole Date . . . . . 18

Annual Review Process . . . . . 18

Changes in Original Parole Dates . . . . . 19

Motion to Confirm . . . . . 22

Committee Action . . . . . 22

ROBYN A. BLACK, Member

Industrial Welfare Commission . . . . . 23

Background and Experience . . . . . 23

Introduction and Support by SENATOR JIM COSTA . . . . . 25

Questions by SENATOR AYALA re:

Position on Minimum Wage . . . . . 26

Voted No on Reviewing Minimum Wage Issue . . . . . 27

Questions by SENATOR PETRIS re:

Farming Background . . . . . 28

Difficulty in Understanding Employees'  
Viewpoint . . . . . 29

Possibility of Deadlock on Minimum Wage  
Issue . . . . . 30

Issue of 10-hour and 12-hour Workday . . . . . 31

Statements by CHAIRMAN LOCKYER re: Orders Need  
to Reflect Better Voting Process on Workday Hours . . . 33

Motion to Confirm . . . . . 34

Committee Action . . . . . 34



INDEX (Continued)

1			
2	JOHN W. GILLIS, Member		
3	Board of Prison Terms . . . . .		34
4	Background and Experience . . . . .		35
5	Questions by CHAIRMAN LOCKYER re:		
6	Feelings about Current Assignment . . . . .		35
7	Toughest Tasks or Decisions . . . . .		35
8	Considerations on Difficult Decisions . . . . .		36
9	Guidelines for Informed Decisions on Possibility of Re-offending . . . . .		37
10	Recommendations on Sentencing Policies or Prison Programs . . . . .		37
11	Questions by SENATOR AYALA re:		
12	Main Factors Used in Determining Suitability for Parole . . . . .		38
13	Case of Sirhan Sirhan . . . . .		39
14	Frequency of Review Process . . . . .		40
15	Questions by CHAIRMAN LOCKYER re:		
16	Sentencing in Rape Cases . . . . .		41
17	Personal Loss Due to Criminal Activity . . . . .		41
18	Ability to be Objective on Board . . . . .		42
19	Questions by SENATOR PETRIS re:		
20	Parole Reviews by Governor . . . . .		43
21	Number of Parole Reversals . . . . .		44
22	Heavy Law Enforcement Representation on Board . . . . .		44
23	Effect of Public Sentiment on Board's Decisions . . . . .		46
24	Questions by CHAIRMAN LOCKYER re:		
25	Allegation of Lobbying Efforts by Spouse . . . . .		48
26			
27			
28			



INDEX (Continued)

Motion to Confirm . . . . .	48
Committee Action . . . . .	49
Statements by SENATOR JIM NIELSEN re: Sirhan Sirhan . .	49
IRENE V. RAYMUNDO, Member Youthful Offender Parole Board . . . . .	50
Background and Experience . . . . .	50
Questions by CHAIRMAN LOCKYER re:	
Career in Employment Area . . . . .	51
Observations to Improve Employment Opportunities for Wards . . . . .	51
Motion to Confirm . . . . .	53
Committee Action . . . . .	53
Termination of Proceedings . . . . .	54
Certificate of Reporter . . . . .	55





P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Number three is Brenda Premo, the Director of the Department of Rehabilitation.

Since it was vote only, I suggested to her that it was unnecessary to make an appearance today. I think probably other Members of the Committee have been visited by her, as have I, and I'm persuaded that the appropriate balance between sensitivity to the person who appoints her and her responsibilities as an advocate for clients exists.

Having been persuaded of that, any reluctance that I had at the previous meeting to vote for confirmation is resolved.

SENATOR BEVERLY: Move her recommendation.

CHAIRMAN LOCKYER: Any other comments, questions? Are you ready to vote on the matter?

We have a motion by Senator Beverly; call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Five to zero.



1           CHAIRMAN LOCKYER: On the new calendar, our first  
2 appointee is Alfredo Bautista, from the Youthful Offender Parole  
3 Board.

4           MR. BAUTISTA: Good afternoon, Senator.

5           CHAIRMAN LOCKYER: It looks like you might start with  
6 a little introductory comment, if you would.

7           MR. BAUTISTA: Well, sir, I really don't. I have  
8 just notes, anticipating questions that you might have of me,  
9 and would be at your pleasure at this time.

10          CHAIRMAN LOCKYER: You have served now for about  
11 three-fourths of a year on this Board.

12          What was the toughest decision you've had to make so  
13 far?

14          MR. BAUTISTA: Well, I guess the toughest decision,  
15 Senator, would probably be the what I see as the increase in the  
16 rise of types of crimes we're getting into the Y.A. and that are  
17 appearing before the Board.

18          I look at this, first of all, from the standpoint of  
19 somebody who wants to serve the general public, but also as a  
20 father of four youngsters who are -- possibly could be in the  
21 same age bracket as these individuals committed to the Y.A.

22          And it is tough on me when I see, appearing before  
23 me, young people, young wards, who have gotten into the state  
24 that they're in in terms of committing crimes. And for me to  
25 look at that and to say, gee, I have to make decisions as to  
26 whether or not I would lock them up. We direct programs for  
27 them.

28          I think that the fact that they have, at a very young



1 age, lost their freedom has been very tough for me. I think  
2 that is probably, in a nut shell, the toughest decision I've had  
3 to make, is how do you make decisions as to the status of these  
4 very young offenders.

5 CHAIRMAN LOCKYER: I just note that this is your  
6 fifth year.

7 MR. BAUTISTA: Yes, sir.

8 CHAIRMAN LOCKYER: You're one of the old timers.

9 How are you coping with the changes in the type of  
10 person you see before you? What does that make you do?

11 MR. BAUTISTA: Well, again, Senator, as I stated in  
12 my initial comments here, I look at my position here as one of  
13 someone who's serving the general public and citizens of  
14 California, but also one as a citizen with children.

15 And, you know, like I said, it's very tough to sit on  
16 the other side of the table, knowing that you have individuals,  
17 young individuals, who have committed very serious crimes, or  
18 who have committed crimes, and we are making decisions as to  
19 their future.

20 And I think I'm coping relatively well. In the four  
21 or five years that I've been on the Board, I think I bring to  
22 the Board a sense of balance. I bring to the Board a  
23 perspective of a reasonable person. I'm not one prone to flying  
24 off the handle. I am one, as you can see from my background,  
25 who has an analytical background.

26 In terms of my education, I've been in institutions  
27 and agencies, organizations, that require discipline. You know,  
28 understanding direction is very important.





1           So, I think that if you use the word "coping", how am  
2 I coping, I think I'm doing relatively well.

3           Again, for anybody who sits on that side of the  
4 table, making decisions, to see how young and younger they're  
5 getting, really, being a parent, being somebody who's concerned  
6 about youth, it does have its times.

7           CHAIRMAN LOCKYER: Now, you see them early, right  
8 after commitment?

9           MR. BAUTISTA: Yes, sir.

10          CHAIRMAN LOCKYER: What sorts of decisions are you  
11 making at that early phase?

12          MR. BAUTISTA: Well, as you're all aware, the whole  
13 issue of juvenile justice deals with the issue of treatment and  
14 training. Juvenile justice, as I see it, is one where we  
15 believe that the young person is still salvageable, despite the  
16 fact that they're committed very serious crimes. In the wisdom  
17 and the judgment of the courts, this person, you know, is  
18 perceived in the future, if he or she goes through the  
19 appropriate treatment and training, can be returned back to the  
20 community.

21          I feel that the decision -- am I moving in the right  
22 direction, Senator?

23          CHAIRMAN LOCKYER: Yes.

24          CHAIRMAN LOCKYER: I think that, you know, the whole  
25 area of juvenile justice, as you can see, you know, when I came  
26 in five years ago, I did not come in with a background of law  
27 enforcement or juvenile justice. I came from a background  
28 initially of working at the University of California.



1 I worked very -- I was very active in the community;  
2 I was very active working with community-based organizations. I  
3 have a speciality working with the Asian-American community,  
4 most particularly the Filipino community, so I have a  
5 perspective.

6 I come in with a very perspective understanding that  
7 there are many things that affect people and behavior. And I  
8 try to apply that, I think to the decisions I make.

9 CHAIRMAN LOCKYER: Do you have a sense of all the  
10 initial determinations that are made when you first decide what  
11 appropriate handling of each individual might result, what's the  
12 debate? What do you sometimes do or not do, depending on the  
13 specifics of the case?

14 MR. BAUTISTA: Well, one of the issues that we look  
15 at, first of all, or that I look is, is that the very fact that  
16 this young man, or this young girl, has been committed to the  
17 Youth Authority because he or she has committed a very serious  
18 crime.

19 What we are looking at, hopefully, in the future is,  
20 what sort of resources do we have available to us, given the  
21 fact that he or she is committed, that would make this person  
22 treatable, salvageable? I think that's the word that a lot of  
23 people are using.

24 And, you know, the very fact -- and I will say this  
25 now, that I have -- in the four and a half years that I've been  
26 on the Board, worked with very, very professional individuals in  
27 the Y.A. who have that in mind, who do have a sense that, yeah,  
28 let's do the best we can; give it what we have in terms of



1 budgetary constraints, resources, to try and treat this  
2 individual, train this individual, so that he or she, when the  
3 appropriate time is made available to us, we can make decision  
4 to not return the person to the community or return the person.

5 CHAIRMAN LOCKYER: Do you feel like you've gotten to  
6 be pretty good at predicting? When you see them on the way in  
7 and make determinations about the appropriate treatment or  
8 training, do you see some of the same people on the way out or  
9 being considered for release?

10 MR. BAUTISTA: You know, Senator, that's a very good  
11 question, because I don't like to use that word, predictable,  
12 because, that's not what the Y.A. and juvenile justice is all  
13 about.

14 You get individuals who, for whatever reason, are  
15 committed to the Y.A., and to say that there is a crystal ball  
16 that says that we can predict one way or the other, I don't like  
17 to look at that.

18 I think, you know, the whole concept of the Y.A., of  
19 the Youth Authority and commitment to the state, is that, you  
20 know, we look at the individual as an individual. We look at  
21 available resources that treats the crime that he or she  
22 committed, and then, given the statutory regulations in terms of  
23 how long we keep this individual, we make the decision further  
24 on the line.

25 But I don't like to say, yeah, we see an individual  
26 that commits this crime. There's a stereotype there. I don't  
27 think that's what I do.

28 I kind of -- my style of assessment is to look at,





1 given what's available, look at the individual and to make  
2 decisions as to where he or she's behavior is at, where he or  
3 she is at in terms of the level of progress in terms of  
4 treatment or training.

5 So, I don't think that there is a crystal ball.  
6 There isn't a factor of predictability, if you may, because  
7 there are many things that are involved in that.

8 CHAIRMAN LOCKYER: Is there something that you wish  
9 you could do more of; that is, some particular training  
10 environment or other approach that maybe you don't get to do it  
11 because of budgetary constraint, or physical location, or  
12 whatever it might be? Do you have that feeling with any  
13 regularity?

14 MR. BAUTISTA: Yes, Senator. If I can make a comment  
15 on that, you know, one of the things -- and I use the fact that  
16 as a father of four, you know, you kind of -- the question that  
17 begs to be asked here is, you know, why are these individuals,  
18 why are these youngsters in the situation they're in right now?

19 And what I would like to see, and I think it's borne  
20 out by the Little Hoover Commission report, is the lack or a  
21 failure in terms of certain institutions we have, more  
22 particularly the family, schools, that aren't catching or  
23 nipping it in the bud. And if I had, you know, anything to  
24 comment to provide input into those policy makers that would do  
25 that, it would be to say: hey, let's look at what we need to do  
26 to nip it in the bud.

27 I think there's been a failure in terms of the value  
28 systems. I think that there hasn't been a sense of



1 accountability that maybe could be there. For whatever reason,  
2 you know, given we are a changing society, we are -- there are  
3 many dynamics that affect why there has been a failure in the  
4 family, why there has been a failure in schools.

5 So, if anything, I think that for me to say, gee  
6 whiz, I really would like to see more direction being made to  
7 address the initial reasons why that person has been --

8 CHAIRMAN LOCKYER: Fair comment.

9 Now, once you're within your own system, so the  
10 preventive opportunities are past for that individual that's  
11 sitting before you, are there things that you would wish to do  
12 within the CYA system that you feel like there's not enough  
13 opportunity to do? That is, any training program, any teaching,  
14 therapy, whatever, something that you feel like you've  
15 programmed them a particular way, but you wish you could do more  
16 of X.

17 Do you get that feeling at all?

18 MR. BAUTISTA: Well, Senator, I think that given the  
19 state of our society in the State of California, the very fact  
20 we are moved by budgetary constraints, there are certain things  
21 that I would like to see more of. And I think it all involves,  
22 you know, the issue of treatment, the issue of sex offenders, as  
23 we've seen a rise in the number of sex offenses that are  
24 committed by youngsters. I think that we need more treatment  
25 resources that addresses that.

26 You know, having come four and a half years ago from  
27 the general community, like I said, the Youth Authority's  
28 probably one of the best kept secrets in the State of



1 California. But never in my four and a half years have I had,  
2 you know, the negative opportunity, if you may, to deal with  
3 somebody that wasn't professional. I think that the Y.A. is  
4 doing everything within their power to try their best to treat  
5 individuals.

6 Plus, there are issues that relate, because of the  
7 lack of money, that would require -- that would say, hey, we  
8 need, given the rise in, say, sex offenders, the rise in the  
9 drug offenses, that maybe we need more programs to address that.

10 And I think we are doing that. As you're probably  
11 aware, there are some options and alternatives that are being  
12 now promoted within the Youth Authority system that say, hey,  
13 instead of just a straight lockup, here's what we're doing.  
14 And, you know, we're doing that, I think.

15 And as a Board, we are working very closely with the  
16 Y.A. to try and get as much -- to be as efficient as possible.

17 CHAIRMAN LOCKYER: Thank you.

18 Senator Lewis.

19 SENATOR LEWIS: How much of a factor, if any, is the  
20 problem of overcrowding in the Y.A. in terms of your decision  
21 making?

22 MR. BAUTISTA: You know, Senator, I would not be the  
23 person that could really address that in a very efficient  
24 manner.

25 I think what we do is, if I can understand your  
26 question, we get a lot of individuals that, because of the  
27 number and because of the lack of resources, that may not be  
28 able to get into certain treatment programs.





1 But I don't think that I can -- maybe if I can ask  
2 you to reclarify your question for me.

3 SENATOR LEWIS: Well, perhaps if it came down to  
4 letting someone out early versus someone else, what kind of  
5 criteria might you choose, what might you be looking at?

6 MR. BAUTISTA: Well, I would look at the seriousness  
7 of the commitment offense. I think that we, as I indicated in  
8 my initial statement, that we are starting to see a number of  
9 individuals that come in with very violent offenses. And I  
10 think if I was involved in the discussion where that was the  
11 case, we would have to look at, you know, the public safety  
12 issue.

13 As we're all aware, we're all very aware of the  
14 public safety. And if push came to shove, you know, whether --  
15 and I don't think that has ever been the case. I don't think  
16 I've ever been involved in a situation where we've had to make a  
17 decision. I'm not at that level to say this guy goes, or this  
18 person goes, or not.

19 I think what we look at is, you know, the commitment  
20 offense by the courts to us. There are many factors involved.  
21 What is the public safety issue. Has this person been involved  
22 in treatment and training that addresses that very commitment  
23 offense.

24 I think that's the exercise that I think that we all  
25 go through on the Board, to assess whether or not, you know, if  
26 overcrowding in the issue, I don't think that's ever been an  
27 issue presented to the Board in that respect.

28 SENATOR LEWIS: But if it became an issue, I take it



1 from your answer that the nature of the crime, whether it's  
2 violent or not, would be something --

3 MR. BAUTISTA: Yes, sir, and whether or not that  
4 person has been involved in treatment programs and training  
5 programs to address that.

6 CHAIRMAN LOCKYER: Senator Ayala.

7 SENATOR AYALA: Dr. Bautista, we have the capacity to  
8 house some 5,850 wards, but we have some 9,000 youngsters or  
9 young people incarcerated, which is 200 percent more than you  
10 have the capacity for.

11 How do you handle that? How do you take care of the  
12 overcrowded conditions in the Youth Authority?

13 MR. BAUTISTA: Well, I think, sir, again, this is my  
14 personal assessment, what we're looking at is, you know, I see  
15 the Youth Authority as the last resort in terms of how we deal  
16 with young people who commit crimes.

17 I think what we need to look at are alternative  
18 programs that may deal with addressing it at the county of  
19 commitment.

20 SENATOR AYALA: That's prior to being incarcerated.

21 MR. BAUTISTA: That's right.

22 SENATOR AYALA: How are you handling today's  
23 overcrowded conditions? Are you releasing wards that are less  
24 risky kids to go back in society?

25 You're not keeping them; you're releasing them, are  
26 you not, some of them, before their time is up?

27 MR. BAUTISTA: I don't think that's the case, sir. I  
28 think that if you understand the guidelines that we operate,



1 which are statutory, obviously, you know, there are seven  
2 categories of which certain crimes are placed. And given the  
3 severity of the crime, that's the length of time.

4 For example, a murder case, there are seven years  
5 involved in terms of treatment and training.

6 I don't think that, in my opinion, looking at what we  
7 have, we are releasing them, you know --

8 SENATOR AYALA: Any sooner than they would normally?

9 MR. BAUTISTA: I don't think that is the case at all.

10 SENATOR AYALA: What are you doing with them? Are  
11 you putting three of them in a cell, or how do you handle that  
12 overcrowded condition?

13 MR. BAUTISTA: Well, I think, sir, again, that would  
14 not be -- because we deal with the treatment-training side of  
15 it, I think that would be a question more appropriate toward the  
16 Youth Authority and their administrative staff in terms of how  
17 they deal with the budgetary stuff, because that's what, you  
18 know, that's the whole issue. It becomes a question of, well,  
19 if you've got overcrowding, what are the resources available to  
20 you fiscally to deal with that.

21 SENATOR AYALA: I'm asking you, how are you doing  
22 that? How are you managing to take these additional 3,000  
23 wards, where do you put them? What do you do with them? Under  
24 normal conditions, do you just release when their time is up.

25 MR. BAUTISTA: No, no, I don't think that's the case,  
26 sir.

27 I think what we're looking at, we're seeing a lot of  
28 double bunking; we're seeing a lot of trying to evaluate the





1 structure, the housing aspect.

2 And clearly, you're correct. What we have -- if what  
3 the Y.A. has said, that they could only house 5,000 or so, and  
4 we've got 9,000, clearly we've got to do what we've got to do,  
5 in terms of double bunking, you know, using resources that are  
6 available to them that may provide housing and what-have you.

7 But in terms of, you know, whether or not we're  
8 releasing them sooner than we should, I don't think that's the  
9 case.

10 I think that what we've got in terms of the Board is,  
11 and our policy is that we look at the public safety issue. We  
12 look at, given the resources available to us, how much treatment  
13 and training can we give these individual to assure us that we  
14 are not releasing them --

15 SENATOR AYALA: But you're not running into any  
16 problems, per se, because of the additional young people you  
17 have incarcerated in terms of being able to house them, and feed  
18 them, and exercise them, and work them? You don't have that  
19 problem today, even though it's almost twice as many wards in  
20 these facilities than they were designed for?

21 MR. BAUTISTA: Clearly, Senator, I agree with you,  
22 clearly.

23 But, you know, again, we are in our state, you know,  
24 we are motivated by what we have in terms of finances. And it's  
25 tough; those are very tough decisions.

26 But I think that what we've got to do, not that these  
27 can be handled now, is look at how do we solve those problems  
28 now? How do we deal with those?



1 I think one of the very issues that I've been very  
2 much involved with is the whole issue of nonviolent offenders  
3 and people who commit crimes related to drug offenses. And the  
4 question is, are these individuals really, you know -- could  
5 they really benefit from going into the Y.A. for long period of  
6 time for high-priced treatment?

7 One of the things that we may want to look at, like I  
8 said before, is why not look at it from the standpoint of the  
9 county court of commitment, juvenile detention, diversion  
10 programs, at the city-county level. I think that's the only way  
11 you're going to do that.

12 SENATOR AYALA: You have a Youth Authority in Chino.

13 MR. BAUTISTA: Yes.

14 SENATOR AYALA: And you have one in Ventura County,  
15 and one in Ione?

16 MR. BAUTISTA: Yes.

17 SENATOR AYALA: Are there any others, the one around  
18 Stockton?

19 MR. BAUTISTA: You've got a very -- you've got a very  
20 large complex there.

21 SENATOR AYALA: Is there another facility in the  
22 pipeline to take care of the overflow of these wards?

23 MR. BAUTISTA: As you're probably aware, Senator, a  
24 few years ago the Chaderjian Institution in Stockton was  
25 expanded to house more mature wards.

26 And I think that there are plans. I've not been  
27 privy to exactly the planning aspect of housing in Y.A., but I  
28 would assume that that'd be the case, given our continued rise



1 in --

2 SENATOR AYALA: But up to now, that has not been a  
3 problem to you folks?

4 MR. BAUTISTA: I don't see that as a problem.

5 SENATOR AYALA: Thank you.

6 CHAIRMAN LOCKYER: One last thing from me.

7 The treatment of wards is more like the old policy  
8 before the state shifted from indeterminate to determinate  
9 sentencing. That is, it's basically an indeterminate sentence  
10 universe.

11 I'd be interested in your observations and  
12 reflections as they relate to that original debate; that is, it  
13 was argued that under indeterminate sentencing, there were too  
14 many disparate results, that minority offenders might get a  
15 longer sentence than Anglo offenders, and so on, depending on  
16 the circumstance. There was a view that there was too much  
17 potential for racial bias in decisions that were made.

18 There was also an interesting argument, if I recall,  
19 about the relationship of the correctional officers in the  
20 facility in either a determinate or indeterminate setting, and  
21 whether their control of inmate behavior would be helped or  
22 hindered by either system.

23 I'd like to kind of contemporize, that is, to get  
24 your reactions to the claim that an indeterminate system might  
25 result in racially biased determinations. Do you any reason to  
26 think that that's in fact what's happened with respect to  
27 treatment of youthful offenders?

28 MR. BAUTISTA: Personally, Senator, I don't think





1 that's the case. I think, you know, the whole issue of juvenile  
2 justice and the Youth Authority is moved on two points. One,  
3 individual assessment, and one on a case by case basis.

4 I think that given my colleagues on the Board, and  
5 civil servants who are also hearing officers, I don't think that  
6 that issue was ever brought up, about race, you know, somebody's  
7 who from a different ethnic community getting more time.

8 Let me say in terms of my four and a half years that  
9 I've been on the Board, I have been quite involved in the Asian  
10 Forum. One of the whole purposes of the Asian Forum is to deal  
11 with issues related to that as it affects Asians and Asian  
12 staff.

13 And clearly, as one who comes from a community-based  
14 perspective, I'm very cognizant of that and would be the first  
15 to say, hey, there's a problem here in terms of decision making,  
16 in terms of length of time.

17 But I don't think that has been the case. I think  
18 that there are some problems, as we see now, given the changing  
19 society, some cultural issues that may need to be addressed as  
20 we see the rise in Asian wards that come in, and the fact that,  
21 you know, there are certain psychological treatment programs  
22 that may need to be re-looked at.

23 But I don't think that in terms of sanctions against  
24 them, there has been any deliberate, there has been any willful,  
25 you know, thing to say, yeah, because somebody -- a person comes  
26 from a certain particular ethnic community, that we are going to  
27 come down a littler harder, or we are going to tailor treatment  
28 programs a little bit more harsh. I don't think that's the



1 case.

2 Like I said, I have -- and I'm speaking about the  
3 Youth Authority in general, and most particularly about our  
4 Board. I think that we come across as being very reasonable in  
5 terms of our assessment. There hasn't -- we come across as  
6 looking at what we have before us. And given our guidelines,  
7 that's what we base our decision on.

8 CHAIRMAN LOCKYER: When a PCD, parole consideration  
9 date, gets set, how is the initial determination made to set a  
10 date for your review? Does that come from the individual  
11 institution and staff that have a ward in that, or what's the  
12 process?

13 MR. BAUTISTA: Yes, sir. That is generally the case.

14 What we have when we receive the ward at the initial  
15 hearing, that person has been committed for a particular crime.  
16 And we are -- we look at what crime has been committed, and the  
17 judge and the courts in their wisdom give them a period of time  
18 that we can -- with which we can treat and train them.

19 After they go through that particular process, they  
20 go through a screening process at what we call our clinic,  
21 working with individuals who are psychiatrists, licensed  
22 clinical social workers, mental health providers, probation  
23 reports. They look at all that, and they provide to us  
24 recommendations.

25 CHAIRMAN LOCKYER: On PCD?

26 MR. BAUTISTA: Well, in terms of -- before we make  
27 the decision on a PCD, then given, you know, the statutory  
28 regulations as to what we can do for a particular category



1 crime, we factor that in in terms of our decision.

2 We look at behavior. We look at amenability to  
3 treatment. We look at, you know, where this person is at in  
4 terms of family. You know, we look at, you know, prior history,  
5 you know, delinquent criminal behavior. And that's all factored  
6 in.

7 And you know, we are -- we operate, and we determine  
8 those decisions, given our guidelines and those other issues.

9 CHAIRMAN LOCKYER: Do you adopt a possible parole  
10 date, then, early on in this process, or is that derived later  
11 on, after they have been in the program for a while?

12 MR. BAUTISTA: There are regulations we have given  
13 certain categories of crime, but in terms of do we do that with  
14 an individual, no.

15 What happens, Senator, is that when the ward comes  
16 before us in the initial hearing, that's it. The file -- we  
17 have an opportunity to review the file there. There is no  
18 unilateral taking of the files out to review, or --

19 CHAIRMAN LOCKYER: Do you establish a parole date  
20 then?

21 MR. BAUTISTA: Yes, yes, sir.

22 CHAIRMAN LOCKYER: At that initial sort of screening,  
23 so to speak?

24 MR. BAUTISTA: Yes, sir.

25 CHAIRMAN LOCKYER: And then they'll be back. Do they  
26 have to come back? Well, you have an annual review, I guess.

27 MR. BAUTISTA: Yes, sir. By law, as you're aware,  
28 they are required to appear before the Board annually, and for





1 us to assess whether or not that person has been amenable to  
2 treatment and training. And that's when those decisions are  
3 made.

4 CHAIRMAN LOCKYER: So, if the officers at a  
5 particular institution, or the director, or whomever, had an  
6 opinion that the person hadn't performed well during, let's say,  
7 the previous year, is that when they would come and recommend to  
8 you a delay in the possible date?

9 MR. BAUTISTA: Yes, sir.

10 What we receive on the annual reports is a very  
11 complete assessment of progress and program. I think that at  
12 that time is when we modify the parole consideration date,  
13 either given -- we get a lot of individuals who do very, very  
14 well. And they have a process within the system already that  
15 says, hey, here are benchmarks, here are goals that need to be  
16 achieved. And you are rewarded if you make -- if you achieve,  
17 it's just like receiving a grade, depending upon how you do.  
18 And on a yearly basis, the individuals can come up with  
19 technically, theoretically, three months time cut off per year.

20 But then we get individuals who do not -- are not  
21 amenable, for one reason or another.

22 CHAIRMAN LOCKYER: What's the proportion of each of  
23 those categories? That is, you set a date early on. How many,  
24 just rough estimates, do you think get delayed or accelerated of  
25 all of the wards, where there's a change in the date that was  
26 originally determined?

27 MR. BAUTISTA: Senator, I don't have the statistics  
28 right now, but given where we're at, I think if I recall seeing



1 a chart of statistics, I don't think we have -- we've been  
2 pretty well in tune with our guidelines in terms of certain PCD  
3 -- parole consideration dates.

4 I think that if anything, more likely we're more  
5 likely to give time for behavior problems than anything else.

6 But I think, as I recall, and I don't have --

7 CHAIRMAN LOCKYER: That is a variation from the  
8 initial determination --

9 MR. BAUTISTA: Yes.

10 CHAIRMAN LOCKYER: -- would be when there's  
11 misbehavior and you would add time.

12 MR. BAUTISTA: Based on -- based on the  
13 recommendation of the Youth Authority and the individuals who  
14 work in it.

15 Again, I didn't mean to imply that we unilaterally do  
16 that. What we do, like I said, we proceed on in an annual  
17 review report that either recommend or, you know, time adds or  
18 time cuts.

19 CHAIRMAN LOCKYER: I'm trying to get a rough estimate  
20 of how many time adds or time cuts do you think you act on in  
21 the course of a year?

22 MR. BAUTISTA: Senator, I don't have those figures  
23 right now.

24 CHAIRMAN LOCKYER: You've been there doing this for  
25 five years. Just a sense of how that --

26 MR. BAUTISTA: If I recall -- if I recall the  
27 figures, I think that we have exceeded that by about like three  
28 months per year. I think '93, I think we were in excess of



1 three months, or something like that. And I think most of that  
2 was --

3 CHAIRMAN LOCKYER: You mean three months more rather  
4 than less? Is that what you mean?

5 MR. BAUTISTA: I think we're right at baseline in  
6 terms of what we've given at the initial hearing. But I don't  
7 -- I think it's -- again, because I don't have those figures  
8 before me, I think that we've been either maintaining that, or  
9 we have given time because of behavior. I think that may be in  
10 excess of three months.

11 CHAIRMAN LOCKYER: Essentially what I'm trying to  
12 understand, I'm trying to inform myself with respect to the  
13 indeterminate sentencing debate, and get some benefit of your  
14 experience in that kind of a system to better inform our  
15 judgments about that.

16 MR. BAUTISTA: Senator, I can understand your  
17 concern. And, you know, I would be more than happy.

18 Again, I apologize for not having those statistics  
19 before me to assist you and the Committee in terms of trying to  
20 understand --

21 CHAIRMAN LOCKYER: I'm mostly interested in your  
22 impressions and philosophy, so it's not a statistical exercise.

23 MR. BAUTISTA: I think, Senator, given my position as  
24 a hearing officer, I think I'm -- I think I have seen, again, I  
25 don't have the raw statistics to back that, more -- less likely  
26 to give them more time unless there's some serious offenses.  
27 And I think that, given my recollection of figures, we have been  
28 more consistent with what was originally given in the baseline.





1           And I think that the Legislature's had that  
2 discussion before, and we have clearly, when we meet, you know,  
3 we look at that. We look at those variables that were  
4 generally, you know, more time, and trying to take it down as  
5 much as we can.

6           CHAIRMAN LOCKYER: Thank you, sir.

7           Are there other questions at all from Members? Are  
8 you ready to act on this particular matter?

9           SENATOR BEVERLY: Move we recommend it.

10          CHAIRMAN LOCKYER: I'm unaware of opposition being  
11 present.

12          If ever I skip by that, I have generally found  
13 statements of support are unnecessary if my sense is that it's  
14 five to zero for the person, so that's why I try to accelerate  
15 at that moment.

16          We have a motion by Senator Beverly. Call the roll.

17          SECRETARY WEBB: Senator Ayala.

18          SENATOR AYALA: Aye.

19          SECRETARY WEBB: Ayala Aye. Senator Lewis.

20          SENATOR LEWIS: Aye.

21          SECRETARY WEBB: Lewis Aye. Senator Petris.

22          SENATOR PETRIS: Aye.

23          SECRETARY WEBB: Petris Aye. Senator Beverly.

24          SENATOR BEVERLY: Aye.

25          SECRETARY WEBB: Beverly Aye. Senator Lockyer.

26          CHAIRMAN LOCKYER: Aye.

27          SECRETARY WEBB: Lockyer Aye. Five to zero.

28          CHAIRMAN LOCKYER: Good luck.



1 MR. BAUTISTA: Thank you, Senator.

2 CHAIRMAN LOCKYER: Robyn Black is our next. I  
3 believe Senator Costa wanted to drop by.

4 MS. BLACK: Good afternoon. Did you want to wait for  
5 Senator Costa?

6 CHAIRMAN LOCKYER: No, we'll fit him in when he  
7 comes.

8 Do you want to start with any comments?

9 MS. BLACK: I do have a short statement, beginning  
10 probably with I hope you're all 49er fans.

11 CHAIRMAN LOCKYER: Maybe.

12 MS. BLACK: That was wishful thinking.

13 I want to thank you, Senators and Mr. Chairman, for  
14 allowing me to be here this afternoon in regards to my  
15 appointment to the Industrial Welfare Commission.

16 My appointment to the IWC represents one of two  
17 employer seats. In addition to my work on the Commission, I am  
18 a partner in a family farming operation which employs  
19 approximately 90 full-time persons. My husband and I are  
20 partners in several agricultural related businesses, and since  
21 1990, have acted as licensed realtor.

22 As you are well aware, it is the duty of the  
23 Commission to ascertain the wages paid to all employees in the  
24 state, and to ascertain the hours, conditions of labor and  
25 employment in various occupations, trades, and industries in  
26 which employees are employed in this state, and to investigate  
27 the health, safety, and welfare of such employees.

28 Since it is the obligation of this Commission to look



1 at the interest of employees, I view my role as an employer  
2 representative as a very important challenge. It is the  
3 responsibility of the IWC to ensure fair treatment of employees  
4 and fair competition for employers.

5 I have felt that this is why, I think, that my role  
6 is especially challenging, because given the interests of the  
7 Commission, and the charge of being an employer rep, I feel it's  
8 an important role.

9 I have felt it further incumbent upon me to  
10 understand and assimilate the employees' issues in the lack of  
11 our Commission having a public member during my time on the  
12 Commission.

13 Despite the issues, I've always based my positions on  
14 first understanding the wants and needs on both sides, and have  
15 preferred to find solutions based on common ground. I bring  
16 this fundamental philosophy to my role as a Commissioner, and  
17 during my ten months on the Commission, I believe I have  
18 conscientiously and with pragmatism considered all issues which  
19 have come before the IWC.

20 As required by law this year, we will soon begin the  
21 formal review of the current minimum wage. I believe in a  
22 minimum wage; however, until we begin that process and fully  
23 study the relevant information and the economic impacts and  
24 dynamics, I cannot tell you what I believe that minimum wage  
25 should be.

26 I bring to this Commission no immovable positions.  
27 Rather, I offer my personal commitment to study each issue as  
28 they come before the Commission, and with compassion and reason,





1 make the best decision that I'm able. Decisions that will  
2 represent both my obligation to the Industrial Welfare  
3 Commission, and my obligation to the employers.

4 I hope to do the best job I can every day that I  
5 serve, and I welcome any questions that you might have.

6 CHAIRMAN LOCKYER: Let's segue Senator Costa into  
7 this discussion.

8 Why don't you introduce this lady?

9 SENATOR COSTA: Thank you very much, Mr. Chairman,  
10 Members of the Rules Committee.

11 I've known Robyn Black for a number of years. She is  
12 a constituent of mine and Senator Maddy's, and during the time  
13 that I have known her, I have found her to be fair, even handed,  
14 and a person who cares very much about the future of this state.

15 While I don't pretend that during her tenure on the  
16 Commission, that she or I will agree on every single issue, I  
17 can safely say that that probably would also relate to just  
18 about everybody who serves on a host of different boards and  
19 commissions.

20 But I think that, as one of the employer appointees  
21 by the Governor, that she also, from her previous background,  
22 understands the importance of issues affecting employees. And  
23 she also, in her activities in a number of agricultural  
24 organizations that I'm familiar with, has been very concerned  
25 about how agriculture comes into the 20th Century, and its  
26 ongoing relationship with labor.

27 And so, I think -- and I mean that in a general  
28 sense.



1 CHAIRMAN LOCKYER: You chose the right century. It's  
2 still trying to get into the 20th.

3 SENATOR COSTA: But I'm talking about -- Senator  
4 Petris, let me explain that. I meant that people have been  
5 critical in the past of agriculture in terms of their efforts in  
6 the area of employee/employer relations, and many of us have  
7 been involved with a number of those issues. And I think that  
8 they have made, I would say, tremendous strides have been made  
9 in the last ten years or more.

10 While some can argue that maybe more needs to be  
11 done, this is a person who's concerned about that balance and  
12 that relationship, and that it be professional, and that it be  
13 appropriate and be proper.

14 That doesn't mean that she is going to agree with you  
15 and I on a whole host of different issues, but it means that you  
16 have a person here, in my opinion, who I think will be fair and  
17 will be accessible and will listen.

18 With that, I would like to, you know, recommend that  
19 the Rules Committee give her every serious consideration for a  
20 person, I think, who will do a good job.

21 CHAIRMAN LOCKYER: Thank you, Senator.

22 Let me ask if there are questions from Members that  
23 they wish to pose? Senator Ayala.

24 SENATOR AYALA: We had a long discussion here about  
25 last week, I think it was. I think that we discussed the  
26 minimum wage process at great length.

27 I just wonder if you think that the minimum wage is  
28 set at the proper level at this point?



1 MS. BLACK: Well, I appreciate that question.

2 During the time that I've been on the Commission, the  
3 ten months, even though we have not begun a formal review, I  
4 have read as much as I've been able to find on the issue, from  
5 both employers and employees.

6 It is my hope that this year, we will have a public  
7 member very soon, and we will begin the formal process.

8 I certainly come to this Commission with the  
9 understanding of the employer's side of the argument regarding  
10 minimum wage, and what I truly hope to do is learn both sides  
11 before I make any decision on that. I don't feel like I have  
12 been -- had enough information. We've had no public hearings on  
13 the wage issue so that we can really look at the economic  
14 impacts.

15 I can't tell you, Senator, and I do apologize.

16 SENATOR AYALA: You voted no last March to review of  
17 the minimum wage?

18 MS. BLACK: In March of this last year?

19 SENATOR AYALA: Last March, the question came up, and  
20 I understand you voted not to review the minimum wage.

21 MS. BLACK: That's correct. I had been on the  
22 Commission approximately, I believe, eight days. That was my  
23 first hearing.

24 It was -- I really hadn't had any time to look at any  
25 information. I wasn't prepared to vote on something that I knew  
26 nothing about, basically.

27 And as I said, I hope that very shortly we will begin  
28 the formal review, and then I'll be afforded the opportunity to





1 study the issue and make the right decision.

2 SENATOR AYALA: Thank you.

3 CHAIRMAN LOCKYER: Is there anyone present? I know  
4 there are employer groups that are supportive. We haven't  
5 received any letters of opposition, so let me at least inquire  
6 formally if there's anyone that would wish to make such a  
7 statement?

8 And then ask Members one more time if they have  
9 questions? Senator.

10 SENATOR PETRIS: Are you really a farmer?

11 MS. BLACK: Am I a farmer? Fourth generation.

12 SENATOR PETRIS: Where?

13 MS. BLACK: In Fresno County.

14 SENATOR PETRIS: First time I ever saw a farmer like  
15 that.

16 [Laughter.]

17 SENATOR PETRIS: What do you grow?

18 MS. BLACK: Mostly vegetables.

19 SENATOR PETRIS: That's terrific.

20 CHAIRMAN LOCKYER: I'm a no vote now.

21 [Laughter.]

22 CHAIRMAN LOCKYER: I already warned her, though,  
23 about broccoli, and all these things.

24 MS. BLACK: Broccoli, of course.

25 SENATOR PETRIS: He's with President Bush on that.

26 MS. BLACK: We hold out hope that you'll change your  
27 mind about broccoli.

28 SENATOR PETRIS: I want to go into the minimum wage



1 thing also, following up on what Senator Ayala was saying.

2 Now, as an employer representative, you would be  
3 expected, I would expect, that you would have an employer's  
4 viewpoint. That's why you're picked for that particular  
5 category based on your experience as an employer.

6 Do you find it difficult when these issues come up to  
7 really take into account the employees' viewpoint?

8 MS. BLACK: Do I --

9 SENATOR PETRIS: To consider the employee's  
10 viewpoint. Labor representatives that come before the  
11 Commission to advocate a position.

12 MS. BLACK: Not at all.

13 I probably honestly go out of my way to consider and  
14 listen and put myself in their perspective, in their position,  
15 when those issues come before me.

16 If there's one quality, I think, that I would bring  
17 to this Commission more than anything, any task that I do, it's  
18 that I thoroughly try to understand both sides' perspective, and  
19 then make a decision based on that.

20 SENATOR PETRIS: I think historically, this group is  
21 divided pretty much along employer/employee lines on most of the  
22 issues, especially on minimum wage. Now, I don't have a count  
23 of each vote, but that's the way it seems to come down.

24 There are increases from time to time, probably even  
25 a unanimous vote from time to time, but there hasn't been an  
26 increase since 1988, and I suspect that part of it's lack of a  
27 quorum. There hasn't been a full Commission for some time.

28 How much of that is due, in the short time you've



1 been on the Board, how much of that is due to that kind of a  
2 division? Employer representatives go one way, and the employee  
3 representatives vote the other way, and you have a deadlock.

4 Have you seen that?

5 MS. BLACK: I would say yes, to some degree, that  
6 that is true.

7 I think that there's been a great hope amongst us  
8 that we would soon have that public member.

9 SENATOR PETRIS: Kind of a swing vote?

10 MS. BLACK: It's my personal feeling that when go in,  
11 and when we begin the formal review process of minimum wage,  
12 that we should have all parties represented fairly,  
13 employees/employers, and the public member, and then  
14 pragmatically, base a decision at that time with all parties  
15 really being able to put forth and make the best decision that  
16 they can.

17 SENATOR PETRIS: Let me go into some specifics.

18 One of the issues that always comes before us in  
19 talking to nominees for this particular position is the ten-hour  
20 workday, sometimes twelve-hour workday, that some employers  
21 impose. They come out 40 hours at the end of a week, but they  
22 like to go 10 hours, 12 hours, without any overtime, because  
23 they say that by the time the week's over, you've only worked 40  
24 hours.

25 Now, the employees have always opposed that;  
26 individual employees, union representatives have always opposed  
27 that. It seems to come up in the culinary workers, I guess, and  
28 hospitals, too. And they say, "No, we don't want to do that.





1 We want to stick to the 8-hour day, and if you want us to work  
2 longer on a particular day, we get time and a half for that."

3 Now, the Board, when this has come up, has voted more  
4 than once to approve; isn't that right, Mr. Chairman? Has voted  
5 to approve this 12-hour workday.

6 I guess that's also prior to your time. That hasn't  
7 come up since you've been on the Board?

8 MS. BLACK: The only issue that we have actively been  
9 looking at during my ten months on the Commission so far has  
10 been a mandatory day off issue, allowing an industry an  
11 exception during a harvest for a brief period of time to have a  
12 temporary exemption. And that's not even formally open and  
13 under review. It's just kind of in an information point of  
14 view.

15 The question that you're asking me about, no, it's  
16 not come up formally before us, but I expect that it probably  
17 will very soon.

18 SENATOR PETRIS: That troubles me. I don't mean in  
19 your case, but just historically.

20 There's certain issues that, you know, you can't  
21 really change a person's mind. Like Senator Lockyer and the  
22 First Amendment. He's the foremost champion in the whole world  
23 on the First Amendment.

24 Now, I don't care what the issue is, if you come to  
25 him and tell him to weaken the First Amendment, you've got to  
26 find somebody else to talk to.

27 Similarly, with the labor representatives, when it  
28 comes to this issue, going up to 10 hours or 12 hours, they are



1 so strongly opposed to it; historically it took so many years to  
2 get to the 8-hour day. Of course, we've had it for a long time,  
3 but there's some veterans still around who fought for that  
4 8-hour day over a period of time.

5 The feelings there are so strong, I wonder why the  
6 employer representatives have continued to vote for that, and in  
7 some cases, imposed it on, combined with the public member,  
8 imposed it on employees who said: this isn't fair; they don't  
9 want to do it this way.

10 Do you have any answer for that?

11 MS. BLACK: Not having been on the Commission at that  
12 time, I cannot tell you.

13 As far as my own position on that, as I said in my  
14 opening statement, I bring no immovable positions to this role,  
15 to this job.

16 I hope to do the best job I can, having heard both  
17 sides, and then make a decision.

18 I was surprised when, I believe, one of the  
19 exemptions was in the nursing industry. The IWC had changed the  
20 orders to allow a 12-hour day.

21 SENATOR PETRIS: That's where we've had most of the  
22 complaints.

23 MS. BLACK: And I understand that, and I have read  
24 some of the letters from some of the women -- people that are  
25 involved in that industry now talk about fatigue, and some of  
26 the flexibility that they feel that they've lost.

27 The only thing I can say to you is, I would be  
28 especially cognizant to ask those questions of anybody that was



1 -- any industry or order that came before us again to make sure  
2 that we don't place undue hardship on employees.

3 The only thing that I offer as a personal, when I  
4 look at those issues, is that if it's a win-win, and it's a win  
5 for employers, it provides for more flexibility, if it's a win  
6 for employees because they will have, in theory, an additional  
7 day off, and maybe not so much of a commuter problem, then I  
8 don't -- you know, I have much to learn about the issue, but I  
9 would certainly be better prepared to ask the questions, having  
10 learned of some of the problems with the previous orders.

11 CHAIRMAN LOCKYER: There may be a process,  
12 recommendation, that I could insert here.

13 As I understand the previous orders, the employees do  
14 vote on whether or not they're desirous of the longer workday.

15 But unlike the rules under any NLRB, National Labor  
16 Relations matter, which are sort of the equivalent at the  
17 federal level of what you're doing, there's a very careful  
18 procedure to make sure the voting is done fairly.

19 I'm told that in some of the industries where votes  
20 occur, the employer in effect controls all the balloting, and  
21 there's some allegation of unfairness.

22 So, separate from whether it's a good or a bad idea,  
23 it may be that if you do this in the future, that the orders  
24 could reflect a better process to have the matter debated.

25 It isn't a substantive matter, but a process one.

26 Senator, did you want to continue?

27 SENATOR PETRIS: I did, but I changed my mind.

28 Thank you.





1 CHAIRMAN LOCKYER: What's the pleasure of the  
2 Committee?

3 SENATOR BEVERLY: Move we recommend confirmation.

4 CHAIRMAN LOCKYER: We have a motion. Is there any  
5 objection to recording the four of us as voting aye, and we'll  
6 leave the roll open so that Senator Lewis may record, if he  
7 wishes to, when he returns.

8 [Thereupon the previous roll  
9 was substituted, and the  
10 confirmation was recommended  
11 with the vote of 5-0, Senator  
12 Lewis later voting aye.]

13 CHAIRMAN LOCKYER: Thank you. Good luck.

14 MS. BLACK: Thank you.

15 CHAIRMAN LOCKYER: I think your fair-mindedness is  
16 evident, and I wish you well.

17 MS. BLACK: I appreciate that, thank you, Mr.  
18 Chairman, Senators.

19 CHAIRMAN LOCKYER: And broccoli has no First  
20 Amendment rights.

21 [Laughter.]

22 CHAIRMAN LOCKYER: Mr. Gillis is next. Good  
23 afternoon, sir.

24 MR. GILLIS: Good afternoon, sir.

25 CHAIRMAN LOCKYER: Did you want to start at all with  
26 any introductory comment?

27 MR. GILLIS: Just basically, thank you. I want to  
28 thank you for being here this afternoon. I'm happy that I've



1 been nominated again for a second term on the Board of Prison  
2 Terms.

3 Just a little bit about my background, I have a law  
4 enforcement background. I had 26 years with the Los Angeles  
5 Police Department and retired from there, and my wife and I  
6 opened up a small business. I was then appointed --

7 CHAIRMAN LOCKYER: What kind of business?

8 MR. GILLIS: We had a computer business, sales and  
9 service.

10 And then I was appointed to this position. I didn't  
11 have a prepared statement, but I will give you my educational  
12 background also.

13 I have a Bachelor's degree in Public Administration,  
14 and a Master's degree -- correction. That's a Bachelor's degree  
15 in Political Science, and a Master's degree in Public  
16 Administration. And I also had a year of law school.

17 CHAIRMAN LOCKYER: How have you liked this job for  
18 the last four years? How do you like this work?

19 MR. GILLIS: I felt that we were doing something very  
20 important. It's a job that, the work is something that you  
21 don't really think about whether you like or dislike. It's  
22 something that's very necessary.

23 So, I have done my best to do the best job possible.  
24 I enjoy being on the Board.

25 CHAIRMAN LOCKYER: Do any particular decisions or  
26 tasks stand out as the most difficult, routinely, that are sort  
27 of similar kinds of problems or circumstances that you have to  
28 make decisions that are the tougher ones?



1 MR. GILLIS: I guess all of my career in law  
2 enforcement, I had to make tough decisions, so I don't really  
3 think of them as being tough, the decisions that I'm making now.

4 However, I do think of some as maybe being a little  
5 more difficult than others.

6 CHAIRMAN LOCKYER: What would be an example?

7 MR. GILLIS: I guess those would be -- an example  
8 would be an individual who has gotten very close to what we  
9 consider to be suitable for parole, and it's very difficult,  
10 once he's close to that line, to decide whether you're going to  
11 grant at this particular time, or whether you're going to wait  
12 another year.

13 So, those are probably the more difficult decisions.

14 CHAIRMAN LOCKYER: What's the quantity of those that  
15 you see in the course of a year?

16 MR. GILLIS: I guess percentage-wise, probably ten  
17 percent.

18 CHAIRMAN LOCKYER: That are in that kind of close  
19 call category?

20 MR. GILLIS: That are in the gray area, yes.

21 CHAIRMAN LOCKYER: What are the considerations that  
22 are in your mind, then when you make those kinds of decisions?

23 MR. GILLIS: The primary consideration is whether or  
24 not the individual is going to reoffend when released, and, of  
25 course, that being public safety. So, you're really concerned  
26 as to whether or not, should you decide to grant at this time,  
27 and maybe there is a gray area, whether or not this individual  
28 is going to reoffend.





1           CHAIRMAN LOCKYER: Are there any sort of guidelines  
2 that you can rely on? What helps you; what informs your  
3 decision as to whether they will or won't reoffend?

4           MR. GILLIS: We look at the criteria, whether or not  
5 -- well, what kind of criminal history the individual has;  
6 whether or not the individual has a history of drug or substance  
7 abuse, and there are several others. But when you put all those  
8 together, and then there is something that the individual has  
9 not quite moved over into the range where it's not doubtful,  
10 then of course, that's what makes it tough. If he's right on  
11 the borders, in those cases, of course, you rule in the public  
12 favor.

13          CHAIRMAN LOCKYER: Have you developed any  
14 recommendations that you'd want to share with us about either  
15 sentencing policies or prison programs that would be different  
16 than they currently are?

17          MR. GILLIS: Well, I had listened to the discussion  
18 about determinate and indeterminate. And, of course, I feel  
19 that indeterminate sentencing is the better way to go. It  
20 certainly gives someone an opportunity to look at the  
21 individual's past history. It gives them an opportunity to see  
22 whether or not he or she has programmed. Indeterminate gives  
23 you an opportunity to take the public safety into mind prior to  
24 making a decision.

25          Under determinate sentencing, you have no choice.  
26 And there are some individuals who are under determinate  
27 sentencing that we know, once they are released, they're going  
28 to go out and reoffend, but there's nothing we can do about



1 them.

2 CHAIRMAN LOCKYER: Except wait for three strikes,  
3 now, as the current law will eventually operate.

4 MR. GILLIS: Yes, yes.

5 CHAIRMAN LOCKYER: What about prison programs or  
6 operations? Do you have any observations? Obviously, you're in  
7 the middle of that, but just as you see the results of it in the  
8 people that are before you, anything that you would change  
9 there?

10 MR. GILLIS: We're beginning to see the result of the  
11 tight resources, and that is, the individual who's not had --  
12 who's not been able to get into a substance abuse program, or  
13 someone who's not prepared to go out and sustain himself or  
14 herself without reverting to a life of crime. And we're  
15 beginning to see those.

16 CHAIRMAN LOCKYER: Lack of job training, or whatever?

17 MR. GILLIS: Lack of job training.

18 CHAIRMAN LOCKYER: Other Members? Senator Ayala.

19 SENATOR AYALA: I'd like to ask Mr. Gillis, what are  
20 the main factors that determine in your mind whether an inmate  
21 who's been convicted of a vicious murder, rape, is suitable or  
22 not suitable to be released? What are the main factors that you  
23 feel are most important?

24 MR. GILLIS: We always say the best predictor of  
25 future behavior is what the individual has done in the past.

26 If you start looking at the individual's past, and  
27 you see that they started using substance at an early age, or  
28 they started committing crimes at an early age, or in and out of



1 Juvenile Hall, and all of those things that are negative  
2 factors, you take all of those into consideration and then look  
3 at the commitment offense that he's been committed for. And if  
4 there is a long history of those things that the individual has  
5 to clear up, then you start looking at what kind of programming  
6 he or she has done, and whether or not they've done enough that  
7 would make you feel comfortable in releasing them.

8 If there are a series of vicious offenses, I think,  
9 well, the more offenses, the more difficult it is for the  
10 individual to show that he's suitable.

11 SENATOR AYALA: You take, for instance, Sirhan  
12 Sirhan. Has he come before you time and again for purposes of  
13 parole?

14 MR. GILLIS: I've sat on his hearings twice, yes.

15 SENATOR AYALA: And nothing changes from one year to  
16 the other, or every two years, whenever that person comes before  
17 you, you still keep denying that parole. All things being equal  
18 from the prior time, you deny that parole.

19 There has to be some improvement, or what is it that  
20 you look for? Let's take, for instance, that individual I just  
21 mentioned, what do you look for in terms of improvement to grant  
22 that release?

23 MR. GILLIS: I'm not saying --

24 SENATOR AYALA: I hope you never do, but --

25 MR. GILLIS: Sirhan Sirhan was one of those, that  
26 there are some individuals that it would be very difficult for  
27 them to show that there has been sufficient improvement to  
28 release them.





1 First of all, in Sirhan Sirhan's case, his crime was  
2 at the -- it just struck at the very fabric of our society,  
3 which is striking down a political figure.

4 SENATOR AYALA: He's been before you twice now,  
5 before you.

6 MR. GILLIS: Yes.

7 SENATOR AYALA: And there's no change, and you don't  
8 feel there's any need to even consider his request?

9 MR. GILLIS: No, I didn't say that there was no need  
10 to consider his request.

11 I'm saying that it becomes very difficult for him to  
12 overcome the crime that he's committed. He may some day become  
13 suitable.

14 SENATOR AYALA: How often do they come in before the  
15 Board? When they become eligible for release, how often? Every  
16 two years?

17 MR. GILLIS: Every two years. With the law that just  
18 became operational in January of this year, it's five years.

19 SENATOR AYALA: Should we make a longer period of  
20 time to make sure there's some change involved? Say five years  
21 or something like that, before they come back?

22 MR. GILLIS: I think the law that just went into  
23 effect in January of this year, which gives us five years --

24 SENATOR AYALA: Five years?

25 MR. GILLIS: -- a five-year period is sufficient.  
26 And in that five-year law, it states that the Board will review  
27 the individual's file within three years. Not a full hearing,  
28 but review the file to make a determination as to whether or not



1 he should come before a full Board.

2 But I think five years is probably adequate.

3 SENATOR AYALA: Thank you.

4 CHAIRMAN LOCKYER: I don't know if there's any need  
5 to editorialize, but you can't keep him long enough, as far as  
6 I'm concerned, just for the record, and nothing we vote on can  
7 in any way relate to your promise of future deeds or activities.

8 Rape is still always determinate, is it not? Did we  
9 just change it? Did we add an indeterminate segment into the  
10 one strike law?

11 MR. GILLIS: It was just changed.

12 CHAIRMAN LOCKYER: So, you're going to now start, not  
13 yet, but when there are convictions and then hearings down the  
14 line, you'll start hearing the sexual predator cases that are  
15 serious matters?

16 MR. GILLIS: Yes, sir.

17 CHAIRMAN LOCKYER: I believe that your family also  
18 suffered a loss due to some criminal activity.

19 MR. GILLIS: Yes, sir.

20 CHAIRMAN LOCKYER: I mean, everyone I know has been  
21 burglarized at one time or another, but I mean a personal loss  
22 of a family member.

23 MR. GILLIS: Yes, sir. My daughter was murdered in  
24 1979.

25 I had -- just a little background on that. I had  
26 always been very active in the community, and I had decided to  
27 run for the school board in the City of Alhambra. That was in  
28 1978. One of my -- one of the things that I was most adamant



1 about in my campaign for the school board was that we remove  
2 the gang members from school grounds, that we block the campuses  
3 and did not allow them to come on.

4 There was a gang in the San Gabriel Valley that had  
5 been very active. They had started becoming involved in  
6 narcotics, sales of narcotics.

7 The campaign was a very heated one. I lost the  
8 campaign in November, and two months later my daughter was  
9 murdered by one of the gang members.

10 CHAIRMAN LOCKYER: They apprehended the person?

11 MR. GILLIS: Yes, sir.

12 CHAIRMAN LOCKYER: I'm sure that we're all moved by  
13 circumstances like this, and even though it's years and years  
14 later, would wish to just offer our sympathies and condolences  
15 for a loss of that sort.

16 The issue that it necessarily raises to at least be  
17 talked about is, whether that emotional trauma brings with it  
18 any emotional constraints that will preclude you from being fair  
19 in a case that might be before you that involved a gang member,  
20 or something of that sort? How have you processed all of this?

21 MR. GILLIS: At the time, I was a member of the  
22 police department, the Los Angeles Police Department. I was a  
23 sergeant.

24 About a year after my daughter's murder, the  
25 Department found no problems with my being able to be objective,  
26 and I was moved into a homicide unit. I became the officer in  
27 charge of the homicide unit. That was in 1979.

28 I didn't retire until 1988. I have handled scores of





1 homicide scenes, multiple arrests, and that has never been an  
2 issue.

3 CHAIRMAN LOCKYER: Never had a complaint from --

4 MR. GILLIS: No, sir.

5 CHAIRMAN LOCKYER: -- an arrestee?

6 MR. GILLIS: No, sir.

7 CHAIRMAN LOCKYER: Thank you, and I hope it's okay to  
8 talk about this, because we're trying to be clear about people's  
9 fairness and objectivity.

10 MR. GILLIS: I understand.

11 CHAIRMAN LOCKYER: Other questions? Senator.

12 SENATOR PETRIS: Recently, we've had a couple of  
13 changes in the law. One goes back to 1984, which authorizes the  
14 Governor to order a full Board review of a prior parole action.  
15 There was a lot of sentiment that the parole board was too soft,  
16 and they wanted to give the Governor a special voice so he could  
17 veto. If the Board was about to parole someone thought to be  
18 particularly bad, the Governor could veto it.

19 The other one, by Senator Boatwright, also gave the  
20 Governor authority to review.

21 Have there been any reviews by the Governor since  
22 you've been on?

23 MR. GILLIS: Yes.

24 SENATOR PETRIS: How many?

25 MR. GILLIS: I don't know exactly how many, but there  
26 have been reviews by the Governor. On every parole that is  
27 granted, it goes to the Governor's Office and it's reviewed.

28 SENATOR PETRIS: Automatically?



1 MR. GILLIS: Automatically.

2 SENATOR PETRIS: Have there been any reversals?

3 MR. GILLIS: Yes, there have been some. There have  
4 been some that have been upheld. I really don't know how many.

5 SENATOR PETRIS: Do you know the break down?

6 MR. GILLIS: No, it's not an inordinate amount of  
7 reversals. I don't know how many.

8 I think it's a good process. I think it's a good  
9 process to be reviewed all along the line. And as a matter of  
10 fact, that's what the full Board does. The full Board will sit,  
11 en banc, and review cases that have been granted by members of  
12 the same Board.

13 SENATOR PETRIS: There's an ongoing problem that I've  
14 observed. I don't know how we're supposed to handle it, but one  
15 is, a lot of emotion expressed by members of the public when  
16 somebody's released.

17 Sometimes I get the impression that no convicted  
18 felon should ever be released from prison. That's the feeling a  
19 lot of people have out there, no matter how grave or  
20 comparatively light the act might have been.

21 During the period time shortly before these two  
22 measures were enacted, the law enforcement representation on the  
23 Board was pretty heavy. Maybe not as heavy as it is now. I  
24 notice six members, out of eight, are out of law enforcement.

25 Why do you suppose the Governor or governors place so  
26 much reliance on law enforcement? Is it because they come face  
27 to face with these people before they're convicted over their  
28 careers, or do they have an historical view? What is the main



1 reason for emphasizing law enforcement so much in this category?

2 MR. GILLIS: Well, I believe there are several  
3 reasons, but probably the primary reason is, when we talk about  
4 the learning curve for other individuals who're coming to sit on  
5 a board who've not been exposed to law enforcement's work, who  
6 don't understand what's required quite often for conviction, and  
7 who don't always understand the background for the investigation  
8 in a criminal trial. I think that's one of the things.

9 Secondly, I kind of believe that law enforcement  
10 individuals can be a little more objective than most others,  
11 because we've seen the innocent and the guilty. We've had to  
12 make a decision on whether or not to arrest someone, and we  
13 based it on a certain set of criteria, and it's not just on a  
14 whim. And quite often, I think a non-law enforcement person  
15 sitting on a panel wouldn't have that kind of experience to make  
16 an assessment on it.

17 So, I think it's a good practice to have law  
18 enforcement personnel on the panel, but it also gives a balance  
19 to have some others, because quite often, those other  
20 individuals can bring up some issues that the law enforcement  
21 person may not have seen.

22 SENATOR PETRIS: I think that's a good point. You  
23 have six out of eight now. That doesn't seem like a balance to  
24 me. It seems a little bit top heavy.

25 I can understand your explanation of why you think  
26 it's good to have law enforcement on there.

27 I'm concerned about the predominance, rather than  
28 just participation.





1           How many members are there on this Board?

2           MR. GILLIS:   There are nine.

3           SENATOR PETRIS:   So, we have one vacancy, so so far,  
4   it's six out of eight, and we don't know about who --

5           MR. GILLIS:   And I'm not sure if it's six out of  
6   eight, but I think that's probably accurate.

7           SENATOR PETRIS:   Yes, we have the list here.   It  
8   might six out of nine; might be seven out of nine.   We don't  
9   know who the ninth person's going to be.

10          MR. GILLIS:   I think the position is about as close  
11   to having to have someone who's at least had law enforcement  
12   background, or some experience as an attorney.   And it's  
13   critical in the learning curve when we put individuals on a  
14   panel who have to carry their own weight.

15          SENATOR PETRIS:   You have your own orientation  
16   course.   Those of you who are experienced have to teach those  
17   who come from outside of law enforcement.

18          MR. GILLIS:   Yes.

19          SENATOR PETRIS:   What if they're former jurors?

20          MR. GILLIS:   Former jurors?

21          SENATOR PETRIS:   Yes.

22          MR. GILLIS:   Gosh, I don't have any feeling, one way  
23   or the other.

24          SENATOR PETRIS:   How much impact does this outburst  
25   have on the Board?   I mentioned a lot of public sentiment that,  
26   from to time, feels that we're too soft, and you're letting  
27   people out that shouldn't be let out.

28          When that happens, does that affect your decision the



1 next time around? Is the pressure felt by you, or do you try to  
2 kind of put it aside and make your own judgment?

3 MR. GILLIS: That generally refers to determinately  
4 sentenced prisoners. The Board doesn't run into that kind of an  
5 experience because usually by the time we've released, the  
6 individual is suitable. So, we really don't run into that kind  
7 of a controversy as far as the Board is concerned.

8 SENATOR PETRIS: You don't have any control. Under  
9 determinate sentencing, they're out at a particular time, and  
10 that's it.

11 MR. GILLIS: That's correct.

12 SENATOR PETRIS: You still get the heat. The public  
13 doesn't --

14 MR. GILLIS: We still get the heat. They still think  
15 that they were released by the Board of Prison Terms, but it  
16 doesn't change the way we do business, because our business is  
17 to make sure the individuals are suitable before we release  
18 them.

19 SENATOR PETRIS: Do you get a lot of letters in those  
20 cases; cases you haven't even had any --

21 MR. GILLIS: Yes.

22 SENATOR PETRIS: -- control over?

23 MR. GILLIS: Yes, sir. We get letters; we get phone  
24 calls; we get questions when we're out in the field, all from  
25 individuals who don't quite understand that the Board of Prison  
26 Terms did not release.

27 And I'm sure you must get those questions also,  
28 because they think that you're responsible for the members of



1 the Board of Prison Terms, who are releasing these individuals.

2 CHAIRMAN LOCKYER: We blame you.

3 MR. GILLIS: Thank you.

4 SENATOR PETRIS: Yes, we just send them right to you.

5 [Laughter.]

6 SENATOR PETRIS: Thanks, Mr. Gillis.

7 CHAIRMAN LOCKYER: In an opposition letter, there's a  
8 comment that your spouse lobbies? What's that about? What are  
9 the facts?

10 MR. GILLIS: No, sir. My wife is not a lobbyist.

11 CHAIRMAN LOCKYER: I don't hold you accountable for  
12 activities of your spouse, but just to understand the  
13 circumstances.

14 MR. GILLIS: She is active, as I have been, with  
15 victim organizations. We go out and we talk to crime victims,  
16 and we -- just a lot of different things that we do as far as  
17 crime victims are concerned, but we're not lobbyists, and she's  
18 not a lobbyist, and I definitely could not be.

19 CHAIRMAN LOCKYER: Let me inquire, I know there's  
20 support present, if there's opposition present?

21 I think we could probably go to a vote if Members are  
22 prepared to do that.

23 SENATOR AYALA: Move Mr. Gillis' confirmation.

24 CHAIRMAN LOCKYER: All right, we have a motion by  
25 Senator Ayala recommending confirmation of Mr. Gillis.

26 Call the roll, if you would.

27 SECRETARY WEBB: Senator Ayala.

28 SENATOR AYALA: Aye.





1 SECRETARY WEBB: Ayala Aye. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye. Five to zero.

10 CHAIRMAN LOCKYER: Good luck, sir.

11 MR. GILLIS: Thank you.

12 SENATOR NIELSEN: Senator, if I may take the liberty,  
13 there are two of us here who have sat on Sirhan's cases. The  
14 Chairman asked a question and hazarded an observation.

15 It may be instructive to Rules Committee that I  
16 indicate, the gravity of the life crime itself is sufficient  
17 cause to not find someone suitable. I can't cite any instance  
18 where I can say that that ever alone has been the reason. The  
19 last hearing I did for Mr. Sirhan, he chose not to even attend  
20 his own hearing. But the gravity -- and that is a good example  
21 of one who offended the mores of our entire nation, and that  
22 alone can keep him --

23 CHAIRMAN LOCKYER: Jim, do you want to sit down and  
24 subject yourself to reconfirmation?

25 [Laughter.]

26 SENATOR NIELSEN: I thought it would be offering a  
27 little bit of insight to this Committee --

28 CHAIRMAN LOCKYER: No, thank you.



1           SENATOR NIELSEN: -- that question, because that's  
2 something that I related to, having sat on Mr. Sirhan's case.

3           To the Committee's consideration, the gravity is a  
4 very important matter in our deliberations.

5           No, sir, Mr. Chairman. You got me last time.

6           CHAIRMAN LOCKYER: No, we were wimps.

7           SENATOR LEWIS: Can the roll be opened on --

8           CHAIRMAN LOCKYER: Yes, the roll is open. We'll  
9 record Senator Lewis as voting aye on Ms. Black; five-zero.

10          Next one is Ms. Raymundo. Good afternoon.

11          MS. RAYMUNDO: Good afternoon.

12          CHAIRMAN LOCKYER: Now that you've been watching, you  
13 know, we're out of questions. So, this may be fast, unless you  
14 want to re-answer everything you've already heard.

15          But you look like you may have begun with a little  
16 opening comment, if you would.

17          MS. RAYMUNDO: Well, I can give you just kind of  
18 brief outline of where I'm from, and what I do.

19          I'm from San Diego, so don't beat up on me too bad.  
20 We've already been beat up hard enough. And a Charger fan, I'm  
21 still a Charger fan, so I'm loyal.

22          I have been on the Board for three and a half years.  
23 I came for the remainder of three years of one term.

24          The reason I want to continue is because I believe in  
25 the system that we have. It's not perfect, but it's getting  
26 better, and I believe in it. I think it's a good system.

27          It provides an opportunity for young people to  
28 change, and to be productive, and taxpayers, gentlemen. And I



1 say that in our hearings often.

2 I'm a mother of --

3 CHAIRMAN LOCKYER: I'm sure they're thrilled at the  
4 idea of getting to pay taxes.

5 MS. RAYMUNDO: Yes. Actually, some of them are  
6 excited about that, because they've learned some responsibility.  
7 Not many, but some.

8 I'm a mother of three boys, and I work with -- the  
9 majority the wards in the Youth Authority are males -- two of  
10 which are in the field of law enforcement, and I have a teenaged  
11 son at home that I'm still struggling with.

12 I really enjoy the job. I can't say that it's always  
13 rewarding, but it is rewarding when you see a ward two years  
14 later, and he's got a college degree and has a family, and comes  
15 in for discharge. And you think, you revoked him; he did a year  
16 because you said he had to do it. And that part is rewarding.  
17 Not too many times, but it happens.

18 Oftentimes, we concentrate on the negative and not on  
19 the positive, and I tend to concentrate on the positive things.

20 I welcome any questions.

21 CHAIRMAN LOCKYER: I notice you spent essentially a  
22 career in the employment area.

23 MS. RAYMUNDO: Yes.

24 CHAIRMAN LOCKYER: Before this position.

25 Are there any observations that you could bring to us  
26 about either the lack of employment opportunities that makes  
27 them wind up being a ward before you, or what you do or could do  
28 better to prepare them or future employment?





1 MS. RAYMUNDO: Well, you asked the question earlier,  
2 and if I may, about expanding programs.

3 I have a favorite program, and it has to do with  
4 employment. It's called the TRP. It's a transitional program  
5 where wards are placed in a home where they give them job-  
6 working -- actually, they put them through a job search workshop  
7 type of program. Then they send them out into the community  
8 where they get interviewed and they get a job.

9 It's a 90-day program, and a lot of the wards do very  
10 well there because they've got a job. They learn how to budget  
11 their money. Simple things, like opening a checking account,  
12 balancing the checkbook, those are the kinds of things that  
13 these young men don't know, and have never learned it from their  
14 mother, their father, or school, because a lot of them are  
15 dropouts.

16 And I think that -- I use that program a lot. Coming  
17 from the field of employment, that's probably why I --

18 CHAIRMAN LOCKYER: How many of them run through that,  
19 or what proportion?

20 MS. RAYMUNDO: I believe a significant number. Well,  
21 actually, the program is very small. I believe they've got like  
22 30 or 40 beds. It's not that many, but it's only a 90-day  
23 program, so it goes pretty quickly, and they graduate.

24 And they have to have a job before they continue.

25 CHAIRMAN LOCKYER: Is that toward the end of their --

26 MS. RAYMUNDO: Yes.

27 CHAIRMAN LOCKYER: -- incarceration?

28 MS. RAYMUNDO: Yes.



1 Oftentimes, you asked earlier about ways that we can  
2 cut down on the over -- or work with the overpopulation. That's  
3 one of the things that we do.

4 If they're getting ready for parole, and they're very  
5 close to it, and they don't pose a public safety issue out in  
6 the community, that's one of the things that we do.

7 There's still law -- you know, still supervised  
8 there, but they get passes, and they get to go on weekend passes  
9 if they're doing well, and if they're employed. So, it works  
10 very well.

11 CHAIRMAN LOCKYER: Would you expand that --

12 MS. RAYMUNDO: Yes.

13 CHAIRMAN LOCKYER: -- if you had the resources?

14 MS. RAYMUNDO: Oh, yes. I would expand that.

15 CHAIRMAN LOCKYER: Your reputation precedes you as  
16 competent, thorough, fair, energetic. Keep it up.

17 Do I have a motion?

18 SENATOR AYALA: So move.

19 CHAIRMAN LOCKYER: Motion by Senator Ayala.

20 May we record the four of us present as voting aye,  
21 and hold the roll open for Senator Petris.

22 [Thereupon the previous roll  
23 was substituted, and the  
24 confirmation was recommended  
25 with the vote of 5-0, Senator  
26 Petris later voting aye.]

27 MS. RAYMUNDO: Thank you, Senators.

28 CHAIRMAN LOCKYER: Thank you very much.



1 [Thereupon this portion of the  
2 Senate Rules Committee hearing  
3 was terminated at approximately  
4 4:45 P.M.]

5 --oo0oo--  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28





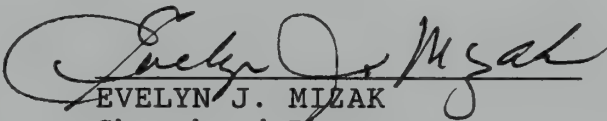
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1<sup>st</sup> day of February, 1995.

  
EVELYN J. MIZAK  
Shorthand Reporter





**270-R**

Additional copies of this publication may be purchased for \$4.50 per copy plus 7.75% California sales tax.

Senate Publications  
1020 N Street, Room B-53  
Sacramento, CA 95814  
(916) 327-2155

Make checks payable to SENATE RULES COMMITTEE.  
Please include Stock Number 270-R when ordering.

500  
R9  
1995  
no.7

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 15, 1995  
1:55 P.M.

DOCUMENTS DEPT.

MAR 3 1995

SAN FRANCISCO  
PUBLIC LIBRARY





1 SENATE RULES COMMITTEE  
2 STATE OF CALIFORNIA  
3  
4  
5  
6  
7

8 HEARING  
9  
10  
11

12 STATE CAPITOL  
13 ROOM 113  
14 SACRAMENTO, CALIFORNIA  
15  
16  
17

18 WEDNESDAY, FEBRUARY 15, 1995  
19  
20

21 1:55 P.M.  
22  
23  
24

25 Reported by:  
26

27 Evelyn J. Mizak  
28 Shorthand Reporter



APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

HYLA H. BERTEA, Member  
California Horse Racing Board

SENATOR KEN MADDY

PETER TUNNEY  
Pacific Racing Association (Golden Gate Fields)



INDEXPage

1	Proceedings	1
2	<u>Governor's Appointees:</u>	
3	HYLA H. BERTEA, Member	
4	California Horse Racing Board	1
5	Introduction and Support by SENATOR KEN MADDY	1
6	Question by CHAIRMAN LOCKYER re:	
7	Problems of Female Stewards	2
8	Response by SENATOR MADDY	2
9	Background and Experience	3
10	Questions by CHAIRMAN LOCKYER re:	
11	Women Stewards' Allegation of Discrimination	4
12	Questions by SENATOR AYALA re:	
13	Satellite Wagering	5
14	Questions by SENATOR PETRIS re:	
15	Reallocation of Racing Dates	6
16	<u>Witness in Support:</u>	
17	PETER TUNNEY	
18	Pacific Racing Association (Golden Gate Fields)	7
19	Resolution of Racing Dates	7
20	Statement by CHAIRMAN LOCKYER re:	
21	Importance of Racing Dates in Alameda County	8
22	Questions by SENATOR PETRIS re:	
23	Labor Relations Disputes	9
24	Motion to Confirm	10
25	Committee Action	10
26	Termination of Proceedings	11
27	Certificate of Reporter	12





P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: The first item, to help Senator Maddy keep his schedule, Senator Maddy is here to introduce Ms. Berteau, appointee to the California Horse Racing Board. We'll start with that. It will be very quick, and then move on to Assembly Member Kuykendall's matter.

Good afternoon.

SENATOR MADDY: Thank you, Mr. Chairman and Members.

I appreciate it very much to have the opportunity to introduce Hyla Berteau, who's been a friend of mine for sometime, along with her husband. She is now a member of the California Horse Racing Board and has served in that capacity for some period of time.

As many of you know, I have an interest in what takes place with horse racing in California. I have not been to many of the meetings, but I have certainly had reports that Ms. Berteau has served admirably, has tried to understand all the issues, and I know there's been some communication between the Pro Tem and Ms. Berteau in respect to some of the stewards' problems. I think she tried to answer that as candidly as possible.

In all respects, I believe she's doing an excellent job, and she's extremely well qualified for almost any position we could have given her -- not we, the Governor could have given her.

CHAIRMAN LOCKYER: We don't have too many positions, but he has a lot.



1           SENATOR MADDY: He has a lot, that's true.

2           But I would certainly recommend that you confirm her  
3 appointment to this Board. I look forward to working with her  
4 in her capacity as a member of the California Horse Racing  
5 Board.

6           CHAIRMAN LOCKYER: Senator Maddy, I know you also  
7 discussed the problems of the female stewards.

8           SENATOR MADDY: Correct.

9           CHAIRMAN LOCKYER: You might also want to make any  
10 comment on it.

11          SENATOR MADDY: I think it's a matter that, as you  
12 and I spoke the other day, that should be resolved and can be  
13 resolved internally. I don't believe or think necessarily that  
14 it in any way affects this appointment, primarily because we do  
15 have a Stewards Committee, or there is a Stewards Committee on  
16 which Commissioner Valpredo serves. I've spoken to him about  
17 the issue.

18          I think that, as I discussed with you, that with a  
19 little bit more time, that they can work the problem out, if  
20 there is a problem.

21          There is an open question about location of stewards.  
22 At one point in time they were employees of the track, if you  
23 will, the tracks. I changed that by law because I didn't think  
24 it was appropriate for having the race tracks employ the people  
25 who were supposed to be monitoring the activities of the race  
26 tracks. So, they are now employees of the California Horse  
27 Racing Board or the people of California.

28          The issue, and I have not pursued it much, but prior,



1 in previous years, Assembly Members of the Committee on G.O.  
2 have legislated about qualifications of stewards, have  
3 legislated on a number of areas relating to stewards. One of  
4 the things that was introduced by Assemblyman Floyd was that  
5 stewards be rotated in assignments around, so that they all --  
6 so they would not be fixed too long or too often at the same  
7 race track.

8 There's a mixed feeling about that. Horsemen like to  
9 know who the stewards are. Obviously, if they're impartial  
10 judges about situations, it helps to be able to go talk to them.

11 So, I think this was a rotation of assignment issue  
12 that should and can be resolved internally, and I would trust  
13 that those stewards who are involved would go back and try again  
14 with the Board and that subcommittee.

15 I think, frankly, it has really no relationship to  
16 this appointment.

17 CHAIRMAN LOCKYER: All right, I understand. Thank  
18 you very much.

19 SENATOR MADDY: Thank you very much, and I would  
20 strongly urge that you confirm her appointment.

21 CHAIRMAN LOCKYER: It looks like you maybe have a  
22 statement to start with, if you would want to begin with any  
23 comments at all.

24 MS. BERTEA: Thank you, Senator Lockyer and Members  
25 of the Committee.

26 I think really Ken said everything I could think of  
27 saying. No, I'm kidding.

28 I feel that I have the ability to add something to





1 the Horse Racing Board. I have good business judgment and  
2 common sense. And I feel my independence from the horse racing  
3 industry and the other members will add some strength to the  
4 Board.

5 I started my career as an elementary school teacher.  
6 I was Co-Commissioner of Gymnastics for the Los Angeles 1984  
7 Olympics, and I was on the Los Angeles Organizing Executive  
8 Committee.

9 Currently, I'm a director of Pacific Enterprises, the  
10 Board of Trustees of Lewis and Clark, and I'm a realtor with  
11 Grubb and Ellis in residential.

12 I'm married. I have four children and one  
13 grandchild, and I feel that serving on the Board for ten months  
14 has given me some opportunity to see the strengths and  
15 challenges of the horse racing industry.

16 I would like the opportunity to make a contribution  
17 and help in the regulation, and I think there's, you know, a lot  
18 of things that can be done, and I can help the industry, and I  
19 look forward to the opportunity.

20 CHAIRMAN LOCKYER: Could you add anything to the  
21 discussion on the women stewards and their allegation of  
22 discrimination?

23 MS. BERTEA: I don't really think they were  
24 discriminated against.

25 I would like to say that I think that it was a  
26 communication glitch, and the specific woman steward that you  
27 were concerned about wasn't notified through her own  
28 representative, from what I can gather. She is being



1 considered, and it was hinging on whether the harness racing is  
2 going to be going on at Cal Expo. And it looks like it will be,  
3 and I think she probably will get assigned. But that really is  
4 all still to be decided.

5 But she was to be informed that she was being  
6 considered, and apparently the female stewards didn't  
7 communicate, and there was just a break down.

8 CHAIRMAN LOCKYER: Are there other questions at all  
9 from Members? Senator Ayala.

10 SENATOR AYALA: We have a satellite racing facility  
11 in San Bernardino, and I think it's well attended.

12 Is that working in the industry at all, and if so, do  
13 you feel we should continue doing that?

14 MS. BERTEA: I think it is working, and I think  
15 there's still some things that need to be worked out.

16 It's, as you know, newer, and it's being examined all  
17 the time. It's under discussion right now.

18 I think it's been very successful.

19 SENATOR AYALA: You support the wagering through  
20 satellite?

21 MS. BERTEA: I really support anything that's good  
22 for the racing industry, and it looks like it is working well  
23 for it.

24 SENATOR AYALA: Incidentally, you went to a good  
25 school. I don't know if Mr. Beverly will agree with that, but  
26 you went to a good school.

27 SENATOR BEVERLY: No resume is perfect.

28 MS. BERTEA: High school or college?



1           SENATOR AYALA: College.

2           MS. BERTEA: All right, thank you.

3           CHAIRMAN LOCKYER: Senator Petris.

4           SENATOR PETRIS: There was a decision made by the  
5 Board. I don't know whether it's during your tenure. You've  
6 been on, what, close to a year?

7           MS. BERTEA: Yes.

8           SENATOR PETRIS: Reallocating race dates.

9           MS. BERTEA: Yes.

10          SENATOR PETRIS: You know, over the years we've heard  
11 a lot about real competition between the different tracks to get  
12 the maximum number of days that they can.

13          MS. BERTEA: Right.

14          SENATOR PETRIS: The Board regulates it.

15          Recently, they've decided to cut down on the Alameda  
16 County Fair racing and switch it over to one of the other  
17 tracks. That created a big fuss in Alameda County, where the  
18 Chair and I live.

19          It seemed to me an unfair shifting away from a  
20 publicly owned activity to a private one. The Golden Gate  
21 Fields, I think, was the recipient of that, or part of it, but  
22 most of it, I think went out. I'm sorry I don't have all the  
23 details.

24          Are you familiar with that decision?

25          MS. BERTEA: I really am not. I know that there have  
26 been concerns about the date allocations, and that is an ongoing  
27 problem.

28          Sometimes they eliminate dates because the races





haven't been filled, and so they kind of consolidate the days.  
I'm not sure that that's the issue that you're discussing.

SENATOR PETRIS: No, I think it's heavier than that.  
It involves the Fourth of July festivities in racing, which are much heavier than the rest of the year. This particular track in Alameda County had the Fourth of July, and that was taken away and shifted somewhere else. That made a lot of people in that county very unhappy. In fact, they want to get some legislation to correct that.

You can't enlighten us?

MS. BERTEA: I don't have the answer for you, but I certainly will get back to you on that in writing, if you'd like.

SENATOR PETRIS: Yes, I would appreciate some further information.

MS. BERTEA: All right, certainly.

CHAIRMAN LOCKYER: May I ask, Senator, on this point, I don't know if there's anyone in the audience that would be willing or able to provide us with any clarification.

MR. TUNNEY: I'm Peter Tunney, representing Golden Gate Fields.

I'm actually here in support of the nominee and the Racing Board.

CHAIRMAN LOCKYER: I assumed that was the case.

MR. TUNNEY: But the answer to that question, Senator Petris, there was a discussion last year at the Dates Committee -- Subcommittee -- of the Board that discussed reallocation of some of those dates, including Fourth of July.



1 But in the final determination, it was left status  
2 quo and it was not changed.

3 SENATOR PETRIS: Wasn't changed.

4 MR. TUNNEY: And so, Alameda County Fair still has  
5 the Fourth of July holiday, and the two weeks that they've  
6 enjoyed for many, many years.

7 SENATOR PETRIS: As a person who's been to the tracks  
8 twice in the last 50 years, I'm delighted.

9 MR. TUNNEY: I think I was there both times, Senator.

10 SENATOR PETRIS: And I won both times. I'm a  
11 lifetime winner. It didn't become abusive or addictive.

12 Was that postponed or just dropped?

13 MR. TUNNEY: I think it was just dropped at that  
14 time, and the Board thought that keeping the status quo was the  
15 best -- in the best wisdom.

16 SENATOR PETRIS: I appreciate you clarifying that,  
17 because the impression I got, it was much farther along than  
18 that.

19 CHAIRMAN LOCKYER: I will only add, now you'll know  
20 this is something we are concerned about, the two of us.

21 Our county is one of those where the County Board of  
22 Supervisors, not the Governor, appoints the members to the Fair  
23 Board. So, our Fair Board is virtually every prominent  
24 Republican in my district, about four-fifths of whom are on my  
25 supporters list. So, I'm very sensitive about their opinions,  
26 and I hope they won't be ignored just because they're  
27 Republicans in Alameda County.

28 While you're here, if you want at all, you could say,



1 Peter, that you're a supporter, if you care to insert that at  
2 this time.

3 MR. TUNNEY: Supporter of the candidate.

4 CHAIRMAN LOCKYER: Yes.

5 MR. TUNNEY: Absolutely.

6 CHAIRMAN LOCKYER: I think that's why you're here, so  
7 you might as well.

8 MR. TUNNEY: And the industry shares that support.

9 CHAIRMAN LOCKYER: We're aware of that, too.

10 Other questions, Senator Petris?

11 SENATOR PETRIS: I've always been interested in the  
12 labor relations, but things have been kind of quiet during this  
13 past year. There haven't been any flare ups. The parimutuel  
14 clerks are the ones that have had problems, especially at Golden  
15 Gate Field.

16 Fortunately, I haven't heard from them in connection  
17 with this hearing. It means they're probably not unhappy.

18 But there were some rather ugly disputes over the  
19 last ten years, ten or fifteen years.

20 Are you the one that smoothed everything over?

21 MS. BERTEA: I think probably, Senator, after I got  
22 on, they quieted down immediately.

23 SENATOR PETRIS: Thank you.

24 CHAIRMAN LOCKYER: Are there any further questions?

25 Anyone else that would wish to indicate support or  
26 opposition?

27 If you wish to close in any way, you're doing fine.

28 MS. BERTEA: All I want to do is thank you, and if





confirmed, I look forward to the opportunity of working with the racing industry. It's a very find and important part of California.

CHAIRMAN LOCKYER: We agree, and it also creates jobs, and revenues, and we need to hopefully reverse the trend and expand if we can.

Senator Beverly, I think, made the motion to recommend confirmation.

SENATOR BEVERLY: Or Senator Lewis.

SENATOR LEWIS: I'm delighted to.

CHAIRMAN LOCKYER: All right, call the roll, please.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Five to zero.

CHAIRMAN LOCKYER: Thank you.

MS. BERTEA: Thank you very much.

CHAIRMAN LOCKYER: Please keep up the good work.

It may save considerable time of some people in the audience -- you're always welcome to stay -- but to inform you that the representative of the Governor's Office just visited



1 and asked that we remove the confirmation of Ed Heidig from  
2 today's calendar and take that matter up at some other time.

3 [Thereupon this portion of the  
4 Senate Rules Committee hearing  
5 was terminated at approximately  
6 2:10 P.M.]

7 --oo0oo--  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15<sup>th</sup> day of February, 1995.

  
EVELYN J. MIZAK  
Shorthand Reporter







**271-R**

Additional copies of this publication may be purchased for \$3.50 per copy  
**plus 7.75% California sales tax.**

Senate Publications  
1020 N Street, Room B-53  
Sacramento, CA 95814  
(916) 327-2155

Make checks payable to SENATE RULES COMMITTEE.  
**Please include Stock Number 271-R when ordering.**

500  
R9  
995  
no.8

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

MONDAY, FEBRUARY 27, 1995  
2:50 P.M.

DOCUMENTS DEPT.

MAR 27 1995

SAN FRANCISCO  
PUBLIC LIBRARY



1 SENATE RULES COMMITTEE  
2 STATE OF CALIFORNIA  
3  
4  
5  
6  
7

8 HEARING  
9  
10  
11

12 STATE CAPITOL  
13 ROOM 113  
14 SACRAMENTO, CALIFORNIA  
15  
16  
17

18 MONDAY, FEBRUARY 27, 1995  
19 2:50 P.M.  
20  
21  
22  
23  
24

25 Reported by:  
26

27 Evelyn J. Mizak  
28 Shorthand Reporter





APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ARTHUR F. VAN COURT, Member  
Board of Prison Terms



INDEXPage

Proceedings . . . . .	1
<u>Governor's Appointees:</u>	
ARTHUR F. VAN COURT, Member Board of Prison Terms . . . . .	1
Questions by CHAIRMAN LOCKYER re:	
Toughest Decision So Far . . . . .	1
Preparation Time per Week . . . . .	3
Suggestions for Changing the Law . . . . .	5
Acknowledge of Letter in Support . . . . .	5
Questions by SENATOR AYALA re:	
Standards Used in Parole Decisions . . . . .	6
Appearances of Sirhan Sirhan before Board . . . . .	7
Percentage of Parole Violators Returning to Prison . . . . .	8
Parole Board too Lax . . . . .	9
Questions by CHAIRMAN LOCKYER re:	
Work as Security for Governor Reagan and Senator Goldwater . . . . .	10
Motion to Confirm . . . . .	11
Committee Action . . . . .	11
Certificate of Reporter . . . . .	12



P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Our first one is Mr. Van Court, appointed to the Board of Prison Terms.

Sir, if you'll join us up here, good afternoon.

MR. VAN COURT: Good afternoon.

CHAIRMAN LOCKYER: Thank you for your willingness to wait.

Did you want to begin with any kind of opening comment at all, sir?

MR. VAN COURT: No, sir. I think everyone's seen my -- a copy of my resume. I'll stand by that and answer any questions on it.

CHAIRMAN LOCKYER: Let me just start with, you've been there not quite a year, I guess.

MR. VAN COURT: Yes, sir.

CHAIRMAN LOCKYER: Ten months or so.

What's been the toughest decision you've had to make so far?

MR. VAN COURT: Oh, I think the toughest one was possibly two months ago. I had a young Mexican boy that had been involved in a drive-by shooting in which murder occurred.

And from reading the facts in the -- both in his report and in the C-File, I saw that he had been more or less kind of drafted to drive the car and use his car. And during the drive-by -- and it was up in the area of the little city of San Fernando in the northern part of the Los Angeles Basin. And one of the boys in the back seat picked up a rifle and shot and





1 killed another person.

2 And he said that he -- there hadn't been any  
3 discussion about shooting anyone, which I didn't totally  
4 believe. But still, I felt that he had already done about seven  
5 and half years and was programming very, very well. But yet, I  
6 knew that he had, you know, many years yet to go. And I was  
7 thinking, what a shame it was that he had to be convicted of a  
8 second degree. However, that's the way the law is.

9 And I felt that he was getting -- he was programming  
10 so well that he'd even gotten his GED and was working on a  
11 couple of years of getting an AA in college. So, I felt that he  
12 was probably getting a better education than he would any place  
13 else.

14 And I can't believe -- I couldn't believe that  
15 someone would get into your car with a rifle, and you wouldn't  
16 be the least bit hesitant about leaving the curb under such  
17 circumstances. But, you know, I didn't really feel that he was  
18 involved -- as much involved in the murder as the other two  
19 were.

20 CHAIRMAN LOCKYER: Was this a question of whether to  
21 schedule him for a parole hearing or something, or was it the  
22 actual hearing?

23 MR. VAN COURT: This was an initial hearing for -- to  
24 set a parole date.

25 CHAIRMAN LOCKYER: What happened then?

26 MR. VAN COURT: Well, of course, he hadn't done  
27 nearly enough time yet, and plus the programming was something  
28 that had happened after he'd been in for about five years. So,



1 he'd only programmed for a couple of years.

2 I'm sure, as I recall, we only gave him a -- we put  
3 the next hearing off, I think, for just one year because he was  
4 programming so well. And we wanted to encourage him to keep it  
5 up and to remain disciplinary free.

6 CHAIRMAN LOCKYER: But those are the kind of tough  
7 choices you're confronted with regularly, I assume?

8 MR. VAN COURT: Senator, every one of them is tough.  
9 And the only way that you can make them easy is do your  
10 homework.

11 That's why it's absolutely essential that you have  
12 three Commissioners on every hearing, because it takes a couple  
13 hours of reading for each and every hearing. And sometimes,  
14 when it's a convoluted crime, it takes longer to take and really  
15 understand, you know, where all the evidence came from. And you  
16 just can't cut any corners on it. You really have to get in  
17 there and read that work.

18 CHAIRMAN LOCKYER: In a typical week, how much  
19 preparation is there? Can you generalize how many hours?

20 MR. VAN COURT: I would say it takes three people  
21 putting in approximately two hours apiece before each hearing.  
22 And so, what we do --

23 CHAIRMAN LOCKYER: That's for each individual  
24 hearing?

25 MR. VAN COURT: For each individual hearing.

26 CHAIRMAN LOCKYER: And you have a bunch of them;  
27 right?

28 MR. VAN COURT: We have about sixteen a week.



1           The thing where we'll get a break will be if, for one  
2 reason or another, one of them will get a continuance, or ask  
3 for a continuance, or be temporarily in Special Housing Unit and  
4 can't be brought down, or some reason.

5           CHAIRMAN LOCKYER: How long does a hearing typically  
6 take?

7           MR. VAN COURT: I would say that they would average  
8 from an hour to an hour and a half.

9           CHAIRMAN LOCKYER: You're running out of hours in a  
10 week.

11          MR. VAN COURT: Well, you put in a lot of hours in a  
12 week, but they schedule it so that you have two hours the first  
13 day, and then four hearings for the next three days, and then  
14 two hours the last day, which lets you travel, supposedly. Of  
15 course, that doesn't take in going to Pelican Bay, because you  
16 don't get to Pelican Bay in four hours.

17          CHAIRMAN LOCKYER: You parachute.

18          MR. VAN COURT: Yes.

19          If you drive to Pelican Bay, which is the way I go,  
20 you know, you're lucky if it takes you seven and a half hours.  
21 So, I just get a real early start and take off.

22          But, you put in -- I think it's the hardest working  
23 committee in the whole state. I've never seen a group of guys  
24 that work harder to do a good job, and they're all dedicated  
25 people.

26          So, I'm just tickled to death to be part of them, and  
27 I hope to continue to be part of it.

28          CHAIRMAN LOCKYER: Do you have any thought about ways





1 the law should changed based on what you have observed during  
2 this process?

3 MR. VAN COURT: Well, I think the most recent law  
4 allowing us on occasion, for people like Sirhan Sirhan, and Ron  
5 Corona, and people like that, to have five years between  
6 hearings because you know very well that there's not going to be  
7 an opportunity. And I think that's working out very well for  
8 that type of a case.

9 When you have someone that's programming, and has  
10 just started, for the last couple of years, you wouldn't want to  
11 give them that much time simply because you want to encourage  
12 him. You don't want to discourage him. And if they're really  
13 programming well, and going after a vocation -- most of them  
14 have never even had a vocation.

15 So, it really is heartwarming to see some of these  
16 people turn around. And you can see it happen just by their  
17 disciplinary record while they're in custody. And the first  
18 couple of years, they can be absolute monsters. Then, all of a  
19 sudden, they start slowing down and maybe maturing, growing up a  
20 little bit, and then all of a sudden, the disciplinary reports  
21 stop. And, you know that these people are programming well at  
22 that point, and you don't want to do anything that's going to  
23 discourage them, and yet you know darn well they're not safe  
24 enough to turn back on the public.

25 CHAIRMAN LOCKYER: I just want to acknowledge here  
26 before calling on any other Members that Bill Barnaby wrote a  
27 very nice letter. I don't know if you've seen it, but  
28 mentioning your willingness to volunteer to help Paul Brown when



1 he was going through his serious illness phase, and that was  
2 both a nice thing to do and a nice comment that's made by one of  
3 your friends.

4 MR. VAN COURT: Yeah, I'm very honored to have that,  
5 especially from Bill Barnaby.

6 CHAIRMAN LOCKYER: Are there other questions from  
7 Members? Senator Ayala.

8 SENATOR AYALA: I'll ask, Mr. Van Court, in terms of  
9 parole for someone who'd been convicted of murder or rape, what  
10 standards in your mind are the greatest; which factors are more  
11 important whether you release that person or not?

12 MR. VAN COURT: I think, again, the disciplinary  
13 record that he's accumulated since he's been in custody. His  
14 performance on programming while he's been in custody, and then  
15 his response to you during the hearing. And you can -- you can  
16 really judge a person a lot by the way he responds to your  
17 questions. And then, sitting there with two very experienced  
18 Commissioners, some of the questions that they come up with are  
19 quite outstanding. And you can make a pretty good determination  
20 on how well this guy has turned around.

21 But the ultimate decision is, is he going to be safe  
22 to turn loose on the citizens of the State of California.

23 SENATOR AYALA: Aren't some of them very proficient  
24 in being good before your Board, and deep inside they're still a  
25 bunch of stinkers, but they put on a good show for you folks?  
26 How much of that really comes into play? Do you really believe  
27 everything they tell you?

28 MR. VAN COURT: No way. No, we -- having been a



1 police officer for many years, and working in narcotic  
2 enforcement, and a multitude -- every assignment you can think  
3 of in law enforcement, you can pretty well judge the character.  
4 And I think I probably should have a Ph.D. from the School of  
5 Hard Knocks, working a radio car in the city of Los Angeles for  
6 five years before I went into the detective bureau.

7 In those days when I worked, interrogation was one of  
8 the most important things that you could do in police work,  
9 because those statements were vitally important. And I think  
10 you can pretty well tell when someone is being just simply  
11 manipulative or is actually telling the truth.

12 SENATOR AYALA: In the case of people like Sirhan  
13 Sirhan, how many times has he appeared before your Board? Not  
14 necessarily your Board, but this Board?

15 MR. VAN COURT: I haven't had the pleasure or having  
16 -- appearing on a Board with Mr. Sirhan yet, but I think he gets  
17 a hearing about every two years or so.

18 SENATOR AYALA: That was my next question. The  
19 person's been before this Board year after year after year, and  
20 you turn him down. What's going to change on that? Why hear  
21 him at all? I know it's inhumane to say that.

22 MR. VAN COURT: Well, I think that five-year delay  
23 between hearings is just made for people like him. And still,  
24 if something miraculous happened, and all of a sudden he made a  
25 turn around, at least there'd be a -- you'd have to give him a  
26 decent hearing to see what he had to say, to see if he'd made  
27 any changes.

28 But basically, the severity of the crime, and his





1 crime was second to none, you know, being a cold, calculated  
2 execution, because that's what it was.

3 Of course, the amazing this is, nowadays, that seems  
4 to be the rule in so many of the homicides. They are just plain  
5 executions. They decided that no witness is the kind of witness  
6 that they want against them, so they simply execute them during  
7 the time of the crime.

8 SENATOR AYALA: I often wondered what do you folks  
9 expect to change from one year to the other in a person like  
10 that guy?

11 MR. VAN COURT: Well, I have to admit that prior to  
12 eight months ago, when I started on this Board of Prison Terms,  
13 I think I was pretty well suspicious of most everyone that was  
14 in custody.

15 But I was very happily able to see that there were  
16 some of these people that were programming, that were changing,  
17 and that that programming and just watching that disciplinary  
18 record was really a tremendous indication on what type of person  
19 you're dealing with. Because early on, some of the goofy things  
20 -- they're throwing feces and urine on the prison guards, and  
21 they're smuggling dope in, and they're doing all kinds of  
22 things. And then, all of a sudden, it starts spreading out, and  
23 it's fewer and fewer, and all of a sudden, when you're talking  
24 to the guy, he's coming up with some reasonable answers. And  
25 once that you can -- you can see that this guy is growing up.

26 And that's the biggest part of it, is maturation.

27 SENATOR AYALA: What percentage of returnees that  
28 have been paroled have returned to the prison for violation of



1 parole? I'm talking about these vicious criminals that we turn  
2 out once in a while.

3 MR. VAN COURT: I don't actually have that  
4 information, but I would guess that in the State of California,  
5 there are quite -- in this state, there's many, many people that  
6 violate parole and return. And I would venture to say that it  
7 would be somewhere up at least 40 percent.

8 And I read that figure on one of the bulletins put  
9 out by the Department of Corrections, that we have a higher rate  
10 of parole violations, people returned to custody, in California  
11 than you have in the other 49 states.

12 SENATOR AYALA: Doesn't that tell you that perhaps  
13 we're too lax when we turn these people loose?

14 MR. VAN COURT: Well, the problem is, is when you  
15 violate the prisoner -- a parole officer violates the prisoner,  
16 which is not really my area of expertise, you can only keep them  
17 in custody for a very short period of time before you have to  
18 turn them loose again.

19 And I think if -- I think something that would make a  
20 more serious violation, make the guy do a longer term would  
21 probably have -- make a bigger impression on him.

22 I'm still -- I still believe that there are a certain  
23 number of criminals that like to be in custody; at least they  
24 get three squares a day, they don't have to worry about hustling  
25 and whether they're going to get their next meal or a warm place  
26 to sleep. And those people, you know, you're probably not going  
27 to really change those very much.

28 But the average person, the most valuable thing that



1 he has is freedom. And anything that's going to take away that  
2 freedom, you know, his ability to go out and do whatever he  
3 wants to, I think if parole violators lost a little more time, I  
4 think that they would be much more inclined not to violate their  
5 parole.

6 SENATOR AYALA: Thank you.

7 MR. VAN COURT: Thank you, sir.

8 CHAIRMAN LOCKYER: I note that you, among other  
9 things, helped with security for Governor Reagan and Senator  
10 Goldwater.

11 MR. VAN COURT: Yes, sir.

12 CHAIRMAN LOCKYER: Maybe you should have been there  
13 for President Reagan, too. I don't know if that would have made  
14 a difference.

15 MR. VAN COURT: I just happened to be in the right  
16 place at the right time. It was kind of timing.

17 But in '64, of course, Secret Service did not provide  
18 any security for a presidential candidate.

19 CHAIRMAN LOCKYER: They didn't?

20 MR. VAN COURT: No, that was the last year that --

21 CHAIRMAN LOCKYER: Now they do.

22 MR. VAN COURT: -- the candidate had to come up with  
23 his own security.

24 That was my first venture into any kind of political  
25 activity, and then strictly as a security person.

26 CHAIRMAN LOCKYER: Is there anyone -- don't feel  
27 compelled to comment, but if there are audience members present  
28 who wish to comment, you certainly may.





1 Other questions from Members? Otherwise, I'll ask  
2 for a motion.

3 SENATOR LEWIS: Move.

4 CHAIRMAN LOCKYER: Senator Petris?

5 SENATOR PETRIS: I was going to move confirmation.

6 CHAIRMAN LOCKYER: All right, we have a motion for  
7 confirmation from Pelewis. Call the roll,

8 SECRETARY WEBB: Senator Ayala.

9 SENATOR AYALA: Aye.

10 SECRETARY WEBB: Ayala Aye. Senator Lewis.

11 SENATOR LEWIS: Aye.

12 SECRETARY WEBB: Lewis Aye. Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Petris Aye. Senator Beverly.

15 SENATOR BEVERLY: Aye.

16 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

17 CHAIRMAN LOCKYER: Aye.

18 SECRETARY WEBB: Lockyer Aye. Five to zero.

19 CHAIRMAN LOCKYER: It's obvious, Mr. Van Court,  
20 you're very conscientious about your duties, and we encourage  
21 you to continue to do so.

22 MR. VAN COURT: Thank you all. I appreciate it very  
23 much.

24 [Thereupon this portion of the  
25 Senate Rules Committee hearing  
26 was terminated at approximately  
27 3:25 P.M.]

28 --oo0oo--



CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28<sup>th</sup> day of February, 1995.

  
EVELYN J. MIZAK  
Shorthand Reporter





**272-R**

Additional copies of this publication may be purchased for \$3.50 per copy  
plus 7.75% California sales tax.

Senate Publications  
1020 N Street, Room B-53  
Sacramento, CA 95814  
(916) 327-2155

Make checks payable to SENATE RULES COMMITTEE.  
Please include Stock Number 272-R when ordering.



500  
R9  
1995  
no.9

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

MONDAY, MARCH 6, 1995  
1:50 P.M.

DOCUMENTS DEPT.

MAR 27 1995

SAN FRANCISCO  
PUBLIC LIBRARY



1 SENATE RULES COMMITTEE  
2 STATE OF CALIFORNIA  
3  
4  
5  
6

7  
8 HEARING  
9

10  
11  
12 STATE CAPITOL  
13 ROOM 113  
14 SACRAMENTO, CALIFORNIA  
15  
16  
17

18 MONDAY, MARCH 6, 1995  
19 1:50 P.M.  
20  
21  
22  
23  
24

25 Reported by:  
26

27 Evelyn J. Mizak  
28 Shorthand Reporter



APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

WILLIAM J. HUME, Member  
State Board of Education

DELAINE EASTIN  
Superintendent of Public Instruction

SENATOR QUENTIN KOPP

BILL MALKASIAN, Member  
State Board of Education

MICHAEL A. GONZALEZ  
Retired Businessman and Farmer

REGINALD TIO NICHOLS, Principal and Head Master  
Fellowship Academy, San Francisco

BOB WELLS  
Association of California School Administrators

JUDY MICHAELS  
California Federation of Teachers

RICK PRATT  
California School Employees Association

MICHELLE CASTRO  
Service Employees International Union





APPEARANCES (Continued)

SHERRY SINKLER-WRIGHT, Vice Principal  
Brett Harte Intermediate School, Hayward

JAMES THRASHER  
California Teachers Association

DONALD H. MARKARIAN, Member  
California Veterans Board

ASSEMBLYMAN CHARLES POOCHIGIAN

RICHARD T. THIERIOT, Member  
Fish and Game Commission

SENATOR TOM HAYDEN

STEPHANIE RUBIN  
Legal Consultant for Senator Hayden

HUEY JOHNSON, President  
Aldo Leopold Society

WALT SIKES, Executive Director  
California Waterfowl Association

VIRGINIA HANDLEY  
The Fund for Animals



# INDEX

	<u>Page</u>
Proceedings . . . . .	1
<u>Governor's Appointees:</u>	
WILLIAM J. HUME, Member California State Board of Education . . . . .	1
Introduction and Support by DELAINE EASTIN, Superintendent of Public Instruction . . . . .	1
Introduction and Support by SENATOR QUENTIN KOPP . . .	3
Opening Statement on Background and Philosophy . . . .	5
Questions by SENATOR AYALA re:	
What Are the Answers to Today's Education Problems . . . . .	19
Higher Entrance Salaries for Teachers . . . . .	19
Incentives . . . . .	20
Public Position on Voucher System . . . . .	22
Privatization of Public Education . . . . .	23
Opinions on <u>The Bell Curve</u> . . . . .	24
Questions by CHAIRMAN LOCKYER re:	
Distribution of Written Material to Board Members . . . . .	27
Kentucky as a Model . . . . .	27
Position on Local School Districts Having Ability to Levy Taxes . . . . .	28
Why Assessment Makes Schools Better . . . . .	30
Where Additional Expenditures on Schools Might Be Contemplated . . . . .	31
Need to Lower Class Sizes . . . . .	33
Salaries . . . . .	34
What Money Is Wasted Now . . . . .	34



INDEX (Continued)

1		
2	Number of Boards and Commissions on Which	
3	Nominee Is Currently Serving . . . . .	35
4	National Education Standards and Improvement	
5	Council . . . . .	36
6	Questions by SENATOR LEWIS re:	
7	Commitment re: Voucher System . . . . .	37
8	Position on Charter Schools . . . . .	38
9	Appreciation for California's Cultural	
10	Diversity . . . . .	39
11	Accusation of Insensitivity from Opposition . . .	39
12	Background on Company . . . . .	41
13	Questions by SENATOR AYALA re:	
14	Bilingual Education . . . . .	43
15	Questions by CHAIRMAN LOCKYER re:	
16	Position on Debate over Primary Language	
17	Instruction . . . . .	45
18	Thoughts about Voucher Initiatives in	
19	Oregon and Colorado . . . . .	46
20	Philosophy of Heritage Foundation . . . . .	47
21	Need to Learn Nominee's Opinion and Philosophy	
22	with Respect to Issues . . . . .	50
23	Position on Edison Project and Channel One . . . .	51
24	<u>Witnesses in Support:</u>	
25	BILL MALKASIAN, Member	
26	State Board of Education . . . . .	52
27	MICHAEL GONZALEZ	
28	Retired Businessman and Farmer . . . . .	54
	Questions by CHAIRMAN LOCKYER re:	
	Type of Farming . . . . .	55
	Knowledge of Nominee . . . . .	55





# INDEX (Continued)

REGINALD NICHOLS, President and Head Master Fellowship Academy, San Francisco . . . . .	56
--	----

## Questions by SENATOR LEWIS re:

Description of Fellowship Academy . . . . .	58
Student Test Scores . . . . .	58
Activities of Nominee for Academy . . . . .	59
Disagreements with Nominee . . . . .	59

## Questions by CHAIRMAN LOCKYER re:

Feelings about Voucher Proposal . . . . .	60
Parents Committed to Education because of Tuitions . . . . .	61
Typical Class Size . . . . .	62

## Questions by SENATOR PETRIS re:

Differences between Fellowship Academy and Public Schools . . . . .	62
Who Isn't on Same Page . . . . .	63

## Questions by CHAIRMAN LOCKYER re:

Position on IQ Testing . . . . .	65
Value of Standardized Testing . . . . .	66

## Witnesses in Opposition:

BOB WELLS Association of California School Administrators . . .	66
--	----

## Questions by SENATOR LEWIS re:

Would ACSA Ever Support any Nominee Who Favored Voucher System . . . . .	68
Litmus Test . . . . .	68

JUDY MICHAELS California Federation of Teachers . . . . .	69
--	----

## Questions by SENATOR AYALA re:

Nominee's Public Position on Vouchers . . . . .	70
---	----



INDEX (Continued)

RICK PRATT	
California School Employees Association . . . . .	70
Questions by SENATOR LEWIS re:	
Need for Balance on State Board . . . . .	75
MICHELLE CASTRO	
Service Employees International Union . . . . .	76
SHERRY SINKLER-WRIGHT, Vice Principal	
Brett Harte Intermediate School, Hayward . . . . .	77
JAMES THRASHER	
California Teachers Association . . . . .	78
Questions by CHAIRMAN LOCKYER re:	
Position on Affirmative Action . . . . .	80
Questions by SENATOR PETRIS re:	
Circulation of Summary of <u>The Bell Curve</u> . . . . .	81
Statement on Affirmative Action . . . . .	84
Statements by CHAIRMAN LOCKYER re:	
<u>The Bell Curve's</u> Tendency to Support	
Racist Doctrines . . . . .	85
Dishonest Scholarship . . . . .	86
Selective Dissemination of Information	
to Board Members . . . . .	87
Request by CHAIRMAN LOCKYER to Put Over Vote . . . . .	88
RONALD H. MARKARIAN, Member	
California Veterans Board . . . . .	88
Introduction and Statement in Support by	
ASSEMBLYMAN CHUCK POOCHIGIAN . . . . .	88
Background and Experience . . . . .	91
Questions by SENATOR AYALA re:	
Ability of Department of Health Services	
to Run Veterans Home . . . . .	92
Number of Veterans Homes in California . . . . .	93



INDEX (Continued)

## Questions by SENATOR PETRIS re:

Poor Reputation of State Military Reserve . . . . .	94
What Is State Military Reserve . . . . .	96
Organization of Military Reserve . . . . .	96
Budget . . . . .	97
Promotion of Officers and Retiring of Personnel . . . . .	98
Most Important Mission of State Military Reserve . . . . .	100
Use of Resources in Disasters . . . . .	100
Relationship with Various Veterans' Organizations . . . . .	101
Cal. Vet Loan Program and Problems for Oakland Fire Victims . . . . .	101
Motion to Confirm . . . . .	104
Committee Action . . . . .	104

## RICHARD T. THIERIOT, Member

Fish and Game Commission . . . . .	105
Background and Experience . . . . .	105
Introduction and Support by SENATOR QUENTIN KOPP . . . . .	107
Issues of Concern by SENATOR TOM HAYDEN . . . . .	108
Political Pressures Causing Fish and Game Department Not to Enforce Laws . . . . .	109
Removal of Director Boyd Gibbons . . . . .	109
Administration's Intention to Weaken Endangered Species Act . . . . .	109
Filing of 193 Violations of Wildlife Codes against Nominee's Corporation . . . . .	110

## Questions by CHAIRMAN LOCKYER re:

Knowledge of Violations and Current Plans of Butte County's D.A. . . . .	111
---	-----





INDEX (Continued)

Testimony of STEPHANIE RUBIN, Legal Counsel to SENATOR HAYDEN . . . . .	113
Questions by CHAIRMAN LOCKYER re:	
Knowledge of Civil Settlement Discussions . . . . .	113
Whose Game Was Involved in Violations . . . . .	114
Response by SENATOR HAYDEN re: Legal Limits in Possession . . . . .	114
Concerns by SENATOR HAYDEN re:	
Fish and Game Philosophy . . . . .	115
Discrepancies in Nominee's Statement and Butte County D.A.'s Statement . . . . .	115
Questions by CHAIRMAN LOCKYER re:	
Settlement Conversations . . . . .	116
Knowledge of Violation with Respect to Keeping Game . . . . .	117
Possibility of More Information before Floor Vote . . . . .	117
Questions by SENATOR AYALA re:	
No Criminal Charges Filed in Case . . . . .	117
Statements by SENATOR HAYDEN re:	
Concern about Nonenforcement of Fish and Game Laws . . . . .	118
Need for Senate Oversight of Department . . . . .	118
Questions by CHAIRMAN LOCKYER re:	
Undue Political Influence in Fish and Game Department regarding Enforcement . . . . .	119
Endangered Species Listing Questions . . . . .	120
Reason for Director Gibbons's Removal . . . . .	120
Most Difficult Issue while on Commission . . . . .	123



INDEX (Continued)

## Questions by SENATOR LEWIS re:

Vote on Listing Gnat Catcher . . . . . 125

Issue with Southern Salamander . . . . . 125

## Questions by SENATOR PETRIS re:

Occupations of Commissioners . . . . . 126

Conflicting Mission of Hunters Versus  
Animal Rights and Need for Balance . . . . . 127Statements by CHAIRMAN LOCKYER re: Nominee's  
Obvious Sensitivity to Habitat Protection Issues . . . 128Witnesses in Support:HUEY JOHNSON, President  
Aldo Leopold Society . . . . . 129WALT SIKES, Executive Director  
California Waterfowl Association . . . . . 132Witness with Concerns:VIRGINIA HANDLEY  
Fund for Animals . . . . . 133

Motion to Confirm . . . . . 136

Committee Action . . . . . 136

Termination of Proceedings . . . . . 137

Certificate of Reporter . . . . . 138



P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Our first item is the confirmation of Mr. Hume. If you'll come on up.

Mr. Hume, customarily we begin with an opening statement, if desired by the gubernatorial appointees. Since Superintendent Eastin is about to be late to another meeting, would you mind if we, at her request, let her make her brief comment before you proceed?

MR. HUME: I'd be delighted.

CHAIRMAN LOCKYER: All right.

SUPERINTENDENT EASTIN: Thank you, Mr. Chair and Senators.

I am Superintendent of Public Instruction Delaine Eastin. It is the first time I have appeared in the Senate in that capacity, and it is my pleasure to do so.

I first want to say that it is my goal in this term of office to ensure that we do everything we can do fundamentally transform public education, to reform it, along lines that those of us who love our children and our state will feel good about.

I believe that California is either going to change the way it educates its children, or it will be changed in a rather heavy-handed way, and in a way that may not serve all of the children. Toward that end, I need members of the State Board that I honestly feel will put the interests of children first: people who are open-minded and will in fact be open to some fundamental change; who will be thoughtful, hard working,



1 but who will always put the children first.

2 Mr. Hume and I haven't always always agreed on  
3 matters as related to public education. And yet, on the most  
4 important basic values as they relate to public education --  
5 that is, putting the children first, fundamentally changing the  
6 system along the lines of fairness, along the lines of hope, and  
7 along the lines of improving the resources that are available to  
8 kids in California -- we do agree.

9 I have found him to be most helpful as a member of  
10 the State Board, and as you know, the State Constitution means  
11 that I'm joined at the hip with the State Board, and so I need  
12 people there who, in fact, do think creatively but do think  
13 consistently about how we can improve education.

14 So, I'm here today, even though some of my friends do  
15 not support this confirmation, to ask you with all due respect  
16 that you confirm this candidate. It is my belief that he can  
17 help us in ways that, frankly, we very much need help. Namely,  
18 we need leaders in the business community, not only who will  
19 criticize us, or who will tell us what's not working in  
20 education, but who will constructively work with us to change  
21 education, and will bring other business leaders along to make  
22 those changes. We need to have people who will, in fact, get  
23 inside the tent with all of us that care about California's  
24 education, its economy, its future as a democracy, and help us  
25 constructively to change.

26 I have found Mr. Hume to be that kind of a Board  
27 member. And so, I am here today, with absolutely a very clear  
28 conscience and a very positive attitude about this candidacy.



1 And he has my full endorsement, and I do need to have people  
2 that will not only be open-minded, but will roll up their  
3 sleeves and really do the work at hand.

4 Mr. Hume is such a Board member, and I would ask  
5 respectfully that this panel confirm him.

6 CHAIRMAN LOCKYER: Thank you.

7 Any questions? Thank you, Superintendent.

8 Of course, probably at least three of the five of us,  
9 maybe more, are delighted also to see you making an appearance  
10 as Superintendent.

11 SUPERINTENDENT EASTIN: Thank you very much.

12 CHAIRMAN LOCKYER: Senator Kopp, you wanted to make  
13 a comment?

14 SENATOR KOPP: Yes.

15 I have been fulfilling my duties in the new Senate  
16 Committee on Housing and Land use; otherwise, I wanted to be  
17 here to present Mr. Hume to the Committee.

18 I am, however, pleased that Superintendent Eastin was  
19 able to provide a perhaps equally or even more relevant opinion  
20 with respect to his manifest qualifications.

21 Permit me to give you my perspective, and it's a  
22 perspective based upon two decades of knowledge of Mr. Hume in  
23 the City and County of San Francisco.

24 His reputation for intellectual integrity and truth  
25 is of the highest order. It is unimpeachable, and it has never  
26 been impeached.

27 More relevantly, both in terms of subject matter and  
28 time, approximately four years ago, Mr. Hume communicated with

1 me in a role as a part of the California Roundtable and the  
2 Education Committee thereof. I have received from him several  
3 communications in that respect, and several statements of how  
4 and in what manner he believed public education could be  
5 improved.

6 Now, that all predated his service on the State Board  
7 of Education. It is probative of the fact that his commitment  
8 and his interest are genuine, not based upon the understandable  
9 human desire of so many to serve on a policy making commission  
10 for the sake of proclaiming that they are on a policy making  
11 board or commission.

12 Mr. Hume is unusual in my experience, and I may be  
13 not able to match the experience of some of my wise elders, like  
14 Senator Petris, Senator Beverly, and Senator Ayala, but in my  
15 experience, he is extraordinary because of his  
16 conscientiousness. Now, some may differ with respect to one  
17 approach or another approach, but the underlying and irrefutable  
18 fact is his dedication to public education and to the  
19 improvement of public education in California.

20 As a San Franciscan, and as a member of the San  
21 Francisco greater community, I'm proud to present Mr. Hume's  
22 credentials, and to present him personally to the Committee with  
23 my unremitting recommendation that he be recommended to the full  
24 State Senate for confirmation.

25 I thank you, Mr. Chairman.

26 CHAIRMAN LOCKYER: Thank you, Senator Kopp. We  
27 appreciate your comments.

28 Mr. Hume, let me apologize. As a person who managed

1 to not have breakfast or lunch, I'm eating something that  
2 probably your firm -- a french fry -- probably your firm is  
3 responsible for.

4 MR. HUME: They need garlic on them to make them  
5 really good.

6 SENATOR LEWIS: We appreciate you not doing that.

7 [Laughter.]

8 CHAIRMAN LOCKYER: If you would, you wanted to begin  
9 with an opening statement.

10 MR. HUME: I do, thank you very much.

11 There are also some individuals in the audience who  
12 came, who might make statements on my behalf. You should give  
13 me guidance on how we should do that.

14 CHAIRMAN LOCKYER: When you're done, we'll ask for  
15 other testimony.

16 MR. HUME: There are certain defining incidents in my  
17 involvement with education. It goes back a long way. It  
18 started out actually in 1972. I was a founding trustee of San  
19 Francisco University High School in San Francisco. I was on  
20 that board for 13 years. I raised money for the school. I was  
21 on the curriculum committee. I was on the master planning  
22 committee. I hired the initial head; went through searches for  
23 successive heads. I was really quite involved with that, and  
24 that school was a super success. It sends kids to the best  
25 colleges in the country.

26 I became involved with Fellowship Academy. Now,  
27 Fellowship is a school in San Francisco which takes people from  
28 the inner city and succeeds. And Reggie Nichols, Head Master of



1 Fellowship Academy, is here, and I would really hope that the  
2 Committee would have a chance to talk with Reggie, because this  
3 is a success story that you just will be proud of.

4 I was involved with the Challenger School. The  
5 Challenger School is a for-profit school in San Jose. I haven't  
6 been very involved in that, but the thing that characterizes the  
7 Challenger School was the academic accomplishments of those  
8 kids. It's a for-profit school; \$4,000 a child. The children  
9 test in the 94th percentile on the Stanford Achievement Test,  
10 and they test every kid every year, and it's a success.

11 Some private schools work very well, and I have seen  
12 education work, and work well in a number of settings.

13 Until I became a member of the California Business  
14 Roundtable, that was my perspective on education: something  
15 that worked and worked pretty well.

16 I became a member of the California Business  
17 Roundtable in 1984 and went on the Education Task Force. The  
18 Roundtable had just finished SB 813, and I became deeply  
19 involved in SB 1274, the restructuring bill.

20 The restructuring bill was built around a Roundtable  
21 report on education reform in California. The report  
22 recommended, among other things: standards, assessment,  
23 parental choice among public schools, teacher evaluation, a look  
24 at the use of time in the classroom, a look at the school year,  
25 a myriad of items that would involve change in the way the  
26 schools were conducted.

27 A defining thread that wove its way through the  
28 report and the Roundtable's beliefs were that keys to change

1 were accountability of the system for student results and  
2 parental choice of schools. We came to believe that the system  
3 must become more accountable to the consumers of education:  
4 parents and children.

5 We tried to get the full restructuring bill through  
6 the Legislature, and the resulting bill, SB 1274, resulted. It  
7 was a shadow of what we had proposed in the initial bill; very  
8 little accountability and no choice. Basically it was a bill  
9 that offered extra funds to schools for proposing innovative  
10 ideas for educational reform.

11 We had all put a great deal of time on restructuring  
12 education, and I, for one, felt that the resulting bill probably  
13 would result in no system-wide change, maybe changes around the  
14 edges, not nothing fundamental.

15 About that time, I was invited to speak at the  
16 Secretary of Education Panel on Choice in Denver. Secretary  
17 Cavasos, the then-Secretary of Education, convened a series of  
18 education choice panels at different places in the country. I  
19 was chosen to be the keynote speaker in Denver.

20 After I spoke, a mother from the audience came up to  
21 me with tears in her eyes and said, "I have four children, and  
22 they can't read. What am I going to do?" That was one of those  
23 defining moments. There was a sense of anguish and helplessness  
24 out there among the parents.

25 About that time the Oregon voucher initiative was  
26 being proposed. I felt that perhaps parental choice was the  
27 ingredient that was missing in the education equation, so I  
28 supported the initiative. I was a significant supporter. The

1 voucher lost two to one. In looking at the results of the  
2 initiative, there was the church versus state issue, as well as  
3 the issue of taking funds away from the public schools that the  
4 public did not like.

5 At about the same time, the Roundtable did a survey  
6 of the skills of entry level employees. As I recall, Pac Tel  
7 had a cut-off point of eighth grade reading and math skills.  
8 Wells Fargo had lowered its cut-off point to seventh grade  
9 reading and math skills. Both companies encountered over 30  
10 percent of job applicants that did not meet the requisite skills  
11 to attain employment. Over 80 percent of the job applicants  
12 from the inner city did not have the necessary skills.

13 I asked our human resources people to provide me with  
14 data regarding our job applicants. We have a seventh grade  
15 reading and math cut level. If we employ individuals with less  
16 than those skills, they are not promotable, and with seniority  
17 in effect, we must be able to promote people. Fifty percent of  
18 our applicants could not pass a seventh grade reading or math  
19 test.

20 My God, I thought. What are those people going to  
21 do? What does it mean for our children and our grandchildren?  
22 What kind of a society do we have in front of us when we are  
23 moving into an increasingly technologically driven society, and  
24 50 percent of our job applicants can't qualify for entry level  
25 positions? We are a low tech industry. We dehydrate onions,  
26 garlic, potatoes, and beans. That was a wake-up call; another  
27 defining moment.

28 About that time, the Colorado voucher initiative was



1 proposed. I was on the list. I was called, and I responded.  
2 Again I was a significant supporter. This time, the initiative  
3 was defeated three to one. Again, the post election analysis  
4 indicated that the church versus state issue, and the concern  
5 about taking money from the public schools were the main reasons  
6 for the defeat of the initiative.

7           Shortly after that, the California voucher initiative  
8 was proposed. Joe Alibrandi, who had been head of the Education  
9 Task Force of the Roundtable, and with whom I had worked very  
10 closely on restructuring education in California, was a major  
11 advocate. I was a friend with Joe. I received a number of  
12 calls from Joe, asking me to become involved and support the  
13 voucher initiative. This was a friend of mine asking for help.

14           I didn't provide any help for the California  
15 initiative. Joe hasn't spoken to me since that time. The  
16 initiative failed three to one.

17           I'm of the mind at this time that the public is  
18 unlikely to support a general voucher. So, where does that  
19 leave me?

20           I didn't ask to be appointed to the State Board. The  
21 Governor asked me, and I guess I'm trying to change the  
22 institution from within than from without.' And I do believe  
23 that the institution needs to change.

24           I do believe that public education is failing an  
25 increasing number of our children, especially inner city  
26 children, that they are not receiving the quality education that  
27 could be available for the same money that is being currently  
28 spent on education, as Fellowship Academy and the Challenger

1 Schools indicates.

2 Fellowship Academy's tuition is \$2400. Challenger is  
3 \$4,000.

4 I do believe that the consequences of that failure  
5 are ominous for our society, for your and my children, and your  
6 and my grandchildren. That we are headed to a society that will  
7 be increasingly described by the intellectual haves and the  
8 intellectual have nots. That is really not the type of society  
9 that I want my children and grandchildren to grow up in.

10 The Secretary of Education appointed me to the  
11 National Assessment Governing Board in 1992. NAEP, or the  
12 National Assessment of Educational Progress, produces the  
13 nation's report card: the National Assessment of Educational  
14 Progress. We meet quarterly and are responsible for consensus  
15 frameworks. We have developed frameworks in math, the arts,  
16 science, reading, writing, and we are working on civics. We  
17 have developed assessments and frameworks and standards.

18 I believe that assessment of student performance  
19 against standards is important. I believe the maxim that what  
20 you assess is what you get, and what you do not assess is what  
21 you do not get.

22 Last Friday in Washington, we were given a preview of  
23 the 1994 reading assessment results. They are available on a  
24 state-by-state basis. The results were grim for the country and  
25 for California. In no way do I see progress being made in  
26 educational reform as measured by demonstration of student  
27 skills and knowledge. Last Friday we were also given a preview  
28 of a comparison of U.S. students versus students from Germany

1 and Taiwan. Again, the results showed the U.S. coming out  
2 poorly.

3 Last week, I asked Archie LePonte, held of the  
4 Educational Testing Service, to address the State Board. I am  
5 encouraging Mark Tucker and the staff of the National Standards  
6 Project, which California participates in, to work with the  
7 Governor and the Superintendent to develop an assessment vehicle  
8 for California. I have invited Tom Boysen of Kentucky, who is  
9 in the audience, by the way, to address the State Board and help  
10 us with our deliberations on assessment. Kentucky can align  
11 their results with a national and therefore international  
12 results. Why not California?

13 Why focus on assessment? I Chair the Foundation for  
14 Teaching Economics. It is a summer program for high school  
15 juniors and high school economics teachers to teach them about  
16 economics. Accountability plays a major role with the  
17 Foundation. We test the students when they come into the  
18 program and when they leave. We have the results evaluated by  
19 CRESST of -- which is an acronym which is something like  
20 California Research Psychometricians, something. Anyway, it's a  
21 very important organization in UCLA. Maybe someone else knows  
22 what CRESST means. I've always called it CRESST.

23 What CRESST told us was the teachers that were  
24 effective and the teachers that were not effective. We have  
25 students and teachers evaluate master teachers, and we take the  
26 evaluations seriously.

27 The results of the evaluation have enabled us to  
28 continue to improve our program, to fine tune our instruction,



1 to ensure that the major points are being understood.

2 Assessment has enabled us to determine: did the kids and the  
3 teachers learn what we have endeavored to teach them? If not,  
4 where are we weak?

5 Our programs are different than they were a year ago,  
6 two years ago, five years ago. Assessment has enabled us to  
7 change and improve our system. That assessment model, I  
8 believe, has importance for educational reform in California.  
9 We have to know where we are, and we don't. Ask yourself, is  
10 there any way to compare School A versus School B in terms of  
11 student accomplishment, versus standards in specific subjects?  
12 There really are no standards in California, and we really need  
13 them.

14 What have I been doing since I came on the Board?  
15 Looking at education from the inside. I've tried to limit my  
16 focus to a few issues which were identified at a retreat that we  
17 had last year. I identify those issues as leverage issues.  
18 They are the following: assessment, the use of time, teacher  
19 credentialing, the core curriculum, and the use of technology.

20 Student assessment. Key to change is knowing where  
21 we are, and we don't. Shouldn't student skills and knowledge be  
22 judged against an outside standard that determines what is  
23 basic, proficient, or advanced, or below basic? We don't have  
24 that information, and yet, it is the key to understanding how  
25 well or poorly we are doing in education.

26 Kentucky knows how well its students are doing  
27 against a standard, both state and national. Shouldn't we also  
28 know in California, and we can.

1           The use of time. I distributed to the Board a study  
2 by the National Commission on Time and Learning, called  
3 "Prisoners of Time." Basically, it says that a major portion of  
4 the time in the classroom -- this came to me as a result of my  
5 being on the National Assessment Governing Board. We are in  
6 contact with people who come to Washington to do studies. This  
7 happened to be done by the National Commission on Time and  
8 Learning, and it says that too much of the time in school is  
9 spent on other than core curriculum. And if ever we want to  
10 reform education in California, we've got to start addressing  
11 the core curriculum.

12           CHAIRMAN LOCKYER: What are the wastes? In what  
13 manner do they indicate, or perhaps more appropriately, what  
14 areas would you suggest are the waste --

15           MR. HUME: They distinguish between core curriculum  
16 and non-core curriculum. And they say that you have to spend  
17 more time on core curriculum.

18           Core curriculum would be reading, writing, math,  
19 history, science. Not driver's ed., you know. You get into the  
20 buzz saw by saying things like that. Not home economics.  
21 Things which are fundamental to children being able to master  
22 subject matter so they can succeed later on in school and in  
23 their later life.

24           So, they distinguish between a core curriculum and a  
25 non-core curriculum, and they're very specific about it.

26           I think we ought to find out how much time we're  
27 spending in California on a core curriculum, and how much time  
28 we're spending on non-core items. This report would say that 50

1 percent or more of your time is spent on non-core items. I  
2 mean, it might be drill team; it might be practice for the  
3 soccer match.

4 But we are different from other countries. Japan  
5 spends much more time on core curriculum than we do.

6 CHAIRMAN LOCKYER: Well, and the school day, the  
7 school week, and the school year are significantly different in  
8 those other cultures.

9 MR. HUME: Correct.

10 CHAIRMAN LOCKYER: I would only wish to point out  
11 that a lot of times, kids, especially that are not motivated to  
12 be academically enthusiastic, often learn the basics in other  
13 contexts. So, it may be in driver ed., which is something they  
14 can understand and relate to. They practice reading and  
15 analysis, and taking an exam, and other things.

16 So, I wouldn't dismiss them as fluff. It may well be  
17 that they're other hooks to get kids to read, write, do  
18 arithmetic in just a different context.

19 MR. HUME: No, I would agree with that.

20 But I think that if a child goes from the second  
21 grade to the third grade and hasn't mastered reading and  
22 writing, he's not going to be successful in the third grade.

23 And so, what I'm saying is, children should be  
24 absolutely assessed and held accountable for mastery of core  
25 curriculum at every grade level before they go on to the next  
26 grade level. And in order to do that, you probably have to  
27 spend more time on core curriculum.

28 You also have to set up standards to know exactly



1 what he should know at the end of every grade level.

2 Teacher assessment. I sit on the Commission on  
3 Teacher Credentialing. The CTC credentials Schools of  
4 Education, not teachers. There is no -- now, this is a very  
5 important issue, and I'd be glad to talk and answer any  
6 questions on this, but I was amazed when I found that the CTC  
7 doesn't credential teachers. It credentials Schools of  
8 Education.

9 And there is an inconsistency between one School of  
10 Education and another School of Education. You talk to  
11 teachers, or you talk with superintendents, and they say, "I  
12 wouldn't take anybody from that School of Education." That's  
13 crazy.

14 We should have a method to evaluate what is coming  
15 out of Schools of Education. So, I wrote a CTC mission  
16 statement. CTC mission statement:

17 "To attain the highest level of student  
18 skills and learning, the CTC shall  
19 establish standards for methods of  
20 evaluating those standards for:

- 21 (a) School of Education
- 22 (b) teacher graduates
- 23 (c) teacher advancement, and
- 24 (d) teacher discipline.

25 "The teacher's certificate shall  
26 profile for the individual teacher the  
27 attained range of skills and knowledge,  
28 citing basic proficient and advanced

1           levels of accomplishment. Initial teacher  
2           compensation would be based on the teacher  
3           profile.

4           "Teacher advancement would be  
5           dependent on improving the original  
6           profile, as well as acquisition of  
7           additional skills and knowledge as  
8           specified by CTC.

9           "Schools of Education would be  
10          evaluated and ranked according to the  
11          profiles of their graduating students."

12          I mean, you'd have some leverage over the Schools of  
13          Education if you ranked them. And right now, you don't.  
14          Students would want to go to the different Schools of Education  
15          that have the highest ranking. That's why they go to Harvard.

16          Right now, a School of Education is a School of  
17          Education, as far as I can see it. And, God knows, I'm not on  
18          the inside.

19          Core curriculum. We have developed superior core  
20          curriculum in California. Is it being used in the Schools of  
21          Education and the classroom? We don't know and probably will  
22          not know until we have an assessment framework linked to the  
23          California framework.

24          I mentioned this to Delaine. I said, "Delaine, I  
25          don't know what's happening inside the Schools of Education."

26          She said, "You know, I just had luncheon with a  
27          series of graduates of Schools of Education. I asked them about  
28          the California framework. Their information was all over the

1 map."

2 I mean, there was no consistency in terms of what the  
3 different students knew. Now, I don't think that's the type of  
4 educational training institution you want in this state.

5 Technology. Technology is changing our world at an  
6 ever increasing rate. I communicate with Bulgaria, Chile, and  
7 parts of the United States via E-Mail.

8 I helped the California Academy of Science, which I  
9 Chaired, go on the Internet and develop an interactive  
10 multimedia exhibit. One of the defining issues I ever saw was  
11 Tennyson's Ulysses on an interactive multimedia format. I went  
12 back to New York, and I saw this presentation by IBM. It was  
13 phenomenal. You could access it in a whole bunch of different  
14 levels. There was multimedia that came to you. I learned  
15 things about Tennyson's Ulysses that stay with me to this day.

16 CHAIRMAN LOCKYER: I'm glad you said Tennyson's;  
17 otherwise, we might be into a protracted discussion with our  
18 Greek scholar here.

19 MR. HUME: It was really phenomenal. I mean, I've  
20 got the tape, and I'd share it with you guys anytime, because it  
21 is so powerful.

22 I helped them, the Academy of Science, develop an  
23 interactive multimedia exhibit, "Life through Time."

24 Technology is happening, and California should be the  
25 leader, but the dynamics of education have to change. Resources  
26 have to be reallocated, and I don't know that that will happen,  
27 given the current circumstances.

28 So, I am focusing on time, student assessment, the



1 use of technology, teacher assessment, and the use of a core  
2 curriculum.

3 My education duties take three days a month, eleven  
4 months a year, for service on the State Board. I'm back here on  
5 Wednesday this month. In addition, two days a month, eleven  
6 months a year, for the Commission on Teacher Credentialing. It  
7 is a major commitment of time.

8 I don't mind doing it. I think it is important. But  
9 perfectly frankly, I, as well as other members of the Board,  
10 wonder if we will make a difference. My conclusion is that if  
11 we can work with you and the Legislature, and in the Governor's  
12 Office, to draft meaningful legislation that addresses leverage  
13 issues, and those which I have mentioned above are what I see as  
14 leverage issues, perhaps we can, and I'm willing to try.

15 That's my statement.

16 CHAIRMAN LOCKYER: Senator Ayala.

17 SENATOR AYALA: We had a long talk this morning, and  
18 I don't think I disagree too much with what you find wrong with  
19 our public schools.

20 But I was more concerned with the answers you had to  
21 the problems facing education today. I was concerned with your  
22 views on the voucher system -- and I understand that at one  
23 time, you were 100 percent for that, and I consider that an  
24 elitist approach to public education, by the way --  
25 privatization of public schools, and The Bell Curve.

26 All those things I'd like you to tell us your  
27 position on, your public position.

28 We don't disagree too much on the end product that

1 our public schools are producing today. But what are we going  
2 to do about it? What are the answers; we all know the problems.

3 MR. HUME: I think if you're going to change  
4 education, you have to change relationships. I think we have  
5 mentioned this this morning.

6 In my business, we try and tie the incentive of the  
7 system to the end result that we want. Consequently, we get the  
8 whole organization going in one direction.

9 As I look at public education right now, I think the  
10 incentives are perverse. I look at the incentives as not being  
11 connected with how well the kids do. If you look at the major  
12 incentives in public education, they're tenure and seniority-  
13 based promotion. What connection does that have to how well the  
14 kids do?

15 How many people get fired because the kids don't do  
16 well?

17 You've got to change the incentive system if you're  
18 ever going to change schools, in my estimation.

19 SENATOR AYALA: One of the incentives is to provide  
20 an entrance salary to teachers that is higher than the current  
21 one to attract better quality people to teach our kids.

22 MR. HUME: I have no problem with paying for  
23 performance, for teachers that really teach well.

24 SENATOR AYALA: We want to attract good people to our  
25 schools.

26 MR. HUME: I don't have any problem with paying top  
27 dollar for that.

28 But when I read the reports that come out of

1 Washington, and one out of New York, where I see that 40, and  
2 50, and 60 percent of the dollars is not spent in the classroom,  
3 it's spent on administration and other things, I'm saying, "Hey,  
4 somehow we're not spending money the way we should have."

5 I think the money is there, but you're not spending  
6 it right.

7 SENATOR AYALA: I'm not suggesting that by higher  
8 entrance salaries for teachers, it's a cure-all. But it's only  
9 one of the ways to start attracting better caliber of people to  
10 teach our kids. They're going to other professions and other  
11 industries because they pay better over there.

12 MR. HUME: Well, you have no argument with me at all.  
13 I would be more than happy to pay teachers who really perform  
14 well in the classroom. But you can't have teachers looked upon  
15 as a lifetime profession just because they were once certified  
16 and they've had three years, so they get tenure.

17 I mean, I know a teacher in San Francisco who told  
18 me, "Jerry, you know what I'm going to spend most of my time  
19 next year doing? I'm going to try to get rid of this teacher  
20 who came to my school, was forced on my school, and I'm going to  
21 have to document that, and it's going to take me a full-time  
22 equivalent in order to get rid of that teacher. And that  
23 teacher's doing a disservice to my classroom."

24 SENATOR AYALA: What are your incentives that you  
25 have in mind, other than getting rid of tenure? What do you  
26 propose to improve the quality of education in public schools,  
27 other than the shifting of that to voucher system, which I  
28 opposed, by the way. I think it's an elitist approach to



1 education, as I said before.

2 MR. HUME: Well, I think the first thing you have do  
3 is, you have to get the parents involved. And the way in which  
4 I think you get the parents involved, and this is the key to  
5 starting on educational reform, is to let parents know really  
6 how well their kids are doing against a set of standards.  
7 Because that will determine whether their kid's doing well, or  
8 whether their kid's doing poorly. And I'd let it fall out from  
9 there.

10 If you have a whole bunch of active parents involved  
11 because they know their kids are doing well, or they know their  
12 kids are doing poorly, you have changed the dynamic. And that's  
13 what you have to do; you have to change the dynamic.

14 SENATOR AYALA: I don't have any problem with local  
15 control of our schools. I don't think that the federal  
16 government or the state has a corner on anything to provide  
17 direction to our public schools. Leave it at the local sector,  
18 where the people decide what level of education they want to  
19 provide for their kids, and what they want to pay for that by  
20 electing their own school board members that do that. And  
21 that's, again, giving it back to the parents, as you indicate,  
22 to make sure they have an input into our school system.

23 What other incentives do you have for our schools to  
24 change it?

25 Everybody agrees that the end product's not what we  
26 want these days, but how are we going to change the dynamics of  
27 that system?

28 MR. HUME: Well, you know, I listed those leverage

1 issues that I think are important. I think you have to look  
2 carefully at how we spend our time in the classroom. I'm not  
3 sure we're spending enough time on the core subjects.

4 SENATOR AYALA: What is your position on the voucher  
5 system, public position?

6 MR. HUME: My public position, as mentioned to  
7 Senator Lockyer today, is that I will not support a voucher in  
8 California for the tenure of my time on the Board of Education.

9 SENATOR AYALA: You changed your mind. You supported  
10 it before.

11 MR. HUME: I never supported a voucher system --

12 SENATOR AYALA: Not here, but in other states.

13 MR. HUME: Right, that's right.

14 SENATOR AYALA: So, you're not in support of the  
15 voucher system in California, but you support the choice system  
16 in order to get that in first before you come to the voucher  
17 system.

18 MR. HUME: I think that the more opportunity you have  
19 for parents to become actively involved and feel empowered about  
20 their schools, the more participation you're going to have, and  
21 the better it's going to be. You bet.

22 SENATOR AYALA: I think that when the local school  
23 boards and the superintendents provide equal schools, no matter  
24 where they're located, so people don't want to move around, is  
25 the answer to some of the voucher system that's moving in  
26 choice.

27 If every school in that school district is equal in  
28 every way with teachers, curriculum, and everything else, why do

1 they want to shift around when each school is equal?

2 But we don't do that, and it starts with the local  
3 government again.

4 So, number one, you're against the voucher system.  
5 What about privatization of public education?

6 MR. HUME: Well, I never said anything about the  
7 privatization of education.

8 SENATOR AYALA: Well, I'm asking you.

9 MR. HUME: I don't even know what privatization of  
10 public education means. What do you mean?

11 SENATOR AYALA: Turn over the running of our schools,  
12 the administration, to the private sector.

13 MR. HUME: Well, let me tell you a little bit about  
14 EAI, Educational Alternatives, Inc. I asked the people from  
15 EAI, and it's run by John Goalie, and I've met John Goalie and  
16 I've gotten to know him. He has developed EAI to come into the  
17 schools.

18 There are three components of EAI. There is Johnson  
19 Controls, which comes in and runs the food service and busing  
20 and maintenance. There is, I think, DeWitt Wallace which does  
21 the accounting. It's a Big Eight accounting firm. And then  
22 there is EAI, which is a firm which is built up in terms of  
23 educational applications.

24 EAI has been invited into Miami Dade, into Hartford,  
25 into Baltimore. And the reports are that they are having some  
26 success. They have come in. They have been approved by school  
27 boards to come in and take over the running of schools. They  
28 are responsible and reportable to the school board, but they



1     come in and they run a school.

2             Now, what exactly relationship they have with the  
3     union, I don't know. I think it's different in Dade than it is  
4     in Hartford than it is in Baltimore.

5             And I know that they have been imposed significantly  
6     in different places. But the funny thing about it is, more  
7     districts which are really failing are going to EAI.

8             Now, I think EAI could probably come to California  
9     and, if a district invited them in, and wanted them to try, and  
10    we should look and see whether it works. Not to do that is to  
11    say, hey, we know better than they know, and I don't know that  
12    we do.

13            SENATOR AYALA: Do you think it's constitutional to  
14    provide public funds for private enterprise, private schools  
15    or private enterprise?

16            MR. HUME: Apparently it's constitutional in these  
17    other jurisdictions, so I assume it would be constitutional  
18    here.

19            SENATOR AYALA: No, I wouldn't say that it was; just  
20    that nobody ever challenged them.

21            But I would suggest to you that the Constitution  
22    provides that no public funds will be provided for private use.  
23    And the schools are private. They're run by people who want to  
24    make a profit. And I'm glad that the people turned them down,  
25    but it was a warning for public education that it better  
26    straighten out a little bit.

27            Tell me about The Bell Curve. What do you think  
28    about that?

1 MR. HUME: Well, as I mentioned to you this morning,  
2 I think The Bell Curve is a book that's been on the New York  
3 Times best seller list. It deals with the impact of  
4 intelligence on individuals and activities.

5 I read -- Charles Murray is the author of The Bell  
6 Curve. He sent me an autographed copy. And I read that thing,  
7 and I couldn't put it down. I was fascinated by it.

8 And I received from the Hudson Institution copies of  
9 summaries of The Bell Curve, and I distributed that to the Board  
10 of Education. I felt people should know what is out there. Not  
11 to know what's out there, I think, is a mistake. I think we  
12 should have taken a look at The Bell Curve, understood what the  
13 implications are, and if appropriate, done something. And I  
14 don't know what that is.

15 And I certainly haven't mentioned The Bell Curve  
16 since I distributed a summary of The Bell Curve to the members  
17 of the Board back in December.

18 SENATOR AYALA: So, you didn't support that?

19 MR. HUME: I can't take a position on The Bell Curve  
20 because it's a book.

21 SENATOR AYALA: But there's a philosophy in there  
22 that you either support or don't, and you say you just  
23 distributed it for the point of information for the members, but  
24 you didn't necessarily support what it said?

25 MR. HUME: It's sort of like bringing Tom Boysen  
26 here. I'm going to ask Tom to come and address the Board on  
27 what goes on in education in Kentucky. I think it's important  
28 that we know what's going on in education. I don't have to take

1 a position on it.

2 SENATOR AYALA: I agree with that.

3 MR. HUME: I think it's important that we know.

4 The same thing with bringing Ted Cauldery out here,  
5 who is on the -- who was the founder of charter schools. I  
6 think that's important, too.

7 I think the more you know, the more intelligent  
8 decisions you can make.

9 SENATOR AYALA: I agree with that, but I was just  
10 wondering if you supported that viewpoint.

11 MR. HUME: I don't know if there's -- I don't know  
12 what the viewpoint of The Bell Curve is. The Bell Curve, in so  
13 many words, says that there is a distribution of intelligence  
14 out there in society.

15 SENATOR AYALA: As I recall, reading some of the  
16 information on that particular book, it also referred to the  
17 super mind of certain ethnic groups as opposed to others, and  
18 intelligence, and it just wasn't, according to people who excel  
19 in certain subjects or intelligence, it was just that certain  
20 groups were not as well informed or as intelligent as other  
21 groups because of ethnic background.

22 MR. HUME: Well, it said that there're two parts in  
23 intelligence. It says that there's nurture and nature. It says  
24 part of it's your environment and part of it's genes. And I  
25 think that how much is one and how much is the other is up for  
26 question.

27 SENATOR AYALA: You haven't taken a position on it?

28 MR. HUME: No, I have not.



1 SENATOR AYALA: Thanks, Mr. Chairman.

2 CHAIRMAN LOCKYER: Have you distributed other written  
3 materials to the Board?

4 MR. HUME: Sure. I distributed "Prisoners of Time."  
5 I distributed the National Academy of Science Study on "What Our  
6 High School Seniors Should Know", "America's Choice", "High  
7 Skills or Low Wages", you know.

8 I do this because I think these are -- this came out  
9 of a study group. This is the National Center on Education and  
10 the Economy.

11 I think we should know things like this. Today, I  
12 gave Delaine Eastin a summary of "National Comparisons." And  
13 this is Kentucky, comparing Kentucky to the nation.

14 I think we should know stuff like this, and I think  
15 we should know why Kentucky -- how Kentucky compares itself to  
16 the nation, what kind of assessment vehicle Kentucky has.

17 I'm going to continue doing that, you know. I think  
18 it's important to bring stuff to the Board.

19 CHAIRMAN LOCKYER: You've mentioned Kentucky a number  
20 of times as, maybe, a model or something.

21 MR. HUME: I think Kentucky is -- and I hope -- maybe  
22 Tom could come up now, because, you know, what's happening in  
23 Kentucky is sort of exciting to me. Would it be appropriate for  
24 Tom to come up?

25 CHAIRMAN LOCKYER: Well, let's wait until we get some  
26 witnesses.

27 But just on the Kentucky point, you probably know  
28 that 100 percent of school funding in Kentucky comes from the

1 state. They don't have the sort of state-local split like what  
2 characterizes California and most other states.

3 Is that an appropriate way of financing the schools?

4 MR. HUME: No. I think the more local control you  
5 have, the better you are.

6 I think that's a problem. I didn't know that.

7 CHAIRMAN LOCKYER: One of the problems we have with  
8 local control, at least as it relates to fiscal matters, is, the  
9 school districts don't have the ability to levy taxes or fees.

10 Should they have that capacity?

11 MR. HUME: Hasn't that been taken care of by court  
12 decision, that all districts have to be within \$100 of each  
13 other?

14 CHAIRMAN LOCKYER: Well, that's the Serrano-Priest  
15 equalization, yes.

16 But no, that's on the spending side. That is, it's  
17 really an order to the state, as much as anyone, by the court  
18 saying, "with all deliberate speed," and we're proceeding very  
19 deliberately.

20 MR. HUME: I thought we were there.

21 CHAIRMAN LOCKYER: Well, it's within --

22 MR. HUME: Within a hundred bucks.

23 CHAIRMAN LOCKYER: With most school districts, but  
24 there's still some extremes on both ends, but it's getting  
25 closer.

26 MR. HUME: I thought the only difference between the  
27 different districts was categorical.

28 CHAIRMAN LOCKYER: No, no.

1 MR. HUME: Okay, I didn't know that.

2 CHAIRMAN LOCKYER: But that really doesn't get to my  
3 question. That's the spending side.

4 How about on the revenue raising, taxing side?  
5 Should, in your view, school district have the ability to levy  
6 local property taxes, or something else that would supplement  
7 state funding?

8 MR. HUME: Well, you know, if I thought more money  
9 would improve the schools, I would say yes. But until I can  
10 feel that more money in the schools is going to improve how well  
11 the schools do, I'd have to say no. I think you'd be spending  
12 -- throwing more money, good money, after bad.

13 So, at the present time, I would not approve  
14 increasing taxes to put more money into the system until the  
15 system becomes more accountable for results.

16 CHAIRMAN LOCKYER: What money, separate from the fact  
17 that there isn't this assessment of individual classroom or  
18 school performance that you've talked about at considerable  
19 length -- and I suspect there's a good deal of agreement with  
20 respect to that issue. I know the Superintendent talks about it  
21 routinely and others -- separate from that, let's say you had  
22 the assessment, and you had those benchmarks that you could  
23 evaluate different teachers or schools.

24 MR. HUME: Right.

25 CHAIRMAN LOCKYER: What would happen then? In your  
26 mind, just looking ahead, you've got the assessment, and we've,  
27 of course, gone through, as you well know, some difficulties in  
28 reaching agreement on assessment mechanisms. But you've got the



1 kind you want, and it's sort of the reading, writing,  
2 arithmetic form of individualized assessment.

3 What happens next? Why does that make things better?

4 MR. HUME: Well, again, I think if you have  
5 individual student assessment that goes home to the parents at  
6 the end of every grade, the parents become active in the  
7 program.

8 I mean, if your child is getting poor marks on  
9 reading against the state standard, I believe, at least, most  
10 parents are concerned about how well their kids are doing. And  
11 they will become involved in the schools.

12 I think absent -- I mean, if Johnny goes home and has  
13 A's on the report card, but an A doesn't mean anything against  
14 the standard, the parent doesn't get active.

15 I know when my kids have trouble, we become active in  
16 the school. It's a motivator to become more active than you  
17 would otherwise.

18 So, I would hope that knowledge on the part of the  
19 parents about how well their kids are doing against standards  
20 get the parents involved.

21 How that plays out, I think, a thousand flowers will  
22 grow. You know, however many different ways the parents want  
23 that to turn out -- I mean, there may be more charter schools.  
24 There may be -- I mean, what happened in New York City, for  
25 example. Sy Fliegel in District 13 went out and went to the  
26 parents and said, "What kind of schools do you want?" And the  
27 parents came back and said, "I want an art school," or "I want a  
28 technology school," or "I want a college prep school."

1           And he said, "Okay, we'll give them to you, but  
2 you've got to sign a contract with us that says if we give you  
3 these schools, you're going to do the following with your kids.  
4 You're going to have a contract with them. You're going to shut  
5 off the television at night. You're going to see they do two  
6 hours of homework."

7           So, there was a give and take between the parents and  
8 the school, because the school offered something to the parents  
9 that the parents didn't have before.

10           That's the type of dynamic that I'm looking for.

11           CHAIRMAN LOCKYER: So, you would anticipate greater  
12 parental involvement --

13           MR. HUME: Yes.

14           CHAIRMAN LOCKYER: -- once the evaluation was in  
15 place?

16           MR. HUME: I believe so. I really do.

17           CHAIRMAN LOCKYER: Where, if ever, would you  
18 contemplate the need for additional expenditures on school  
19 programs?

20           MR. HUME: Technology, absolutely, hands down.

21           CHAIRMAN LOCKYER: So that you would do now?

22           MR. HUME: Well, even -- even now, I mean, I was on  
23 the ECTL, the Education Commission on Technology and Learning,  
24 and at least my exposure to the ECTL is, we really didn't know  
25 where we were going very well. We had 29 million or \$28 million  
26 to spend, and we sort of spread it around.

27           But I can say that I thought there was a focus. I  
28 mean, what I suggested to the ECTL is, you ought to computerize

1 the Schools of Education. You ought to get all this technology  
2 going into the Schools of Education, because you want a whole  
3 bunch of teachers coming out of Schools of Education who are up  
4 to speed and really know what's going on, and then become  
5 advocates for it at the local level.

6 Well, that's not happening. I mean, we're spending  
7 it at the local level.

8 I would rather spend it at the -- at the college  
9 level. Train the teachers that are coming out. Then they can  
10 become advocates, and they can actually become trainers of the  
11 teachers in the school.

12 I think we're going about it the wrong way. So, I  
13 would re-divert the funds from ECTL from the local schools to  
14 the Schools of Education, and the money's there. But as I  
15 understand, and I asked them, they said we can't do it because  
16 of Prop. 98.

17 Now, I don't know the vagaries of Prop. 98, but  
18 that's what I was told. I think that's inappropriate.

19 CHAIRMAN LOCKYER: Prop. 98 monies are restricted to  
20 K-14, and that may be the reason why, if it's a state college or  
21 university teaching program, that that money in and of itself  
22 can't be redirected; although, there's other money. That's not  
23 the only source of funding.

24 MR. HUME: You see what I mean by leverage, though.  
25 I think you can leverage the Schools of Education by getting  
26 teachers who are really competent in terms of technology, and  
27 have them bring it into the schools.

28 CHAIRMAN LOCKYER: I'd like to stay with this issue



1 for a few more minutes, because it's not uncommon to hear people  
2 say we don't need to spend more money on schools; that we need  
3 to spend current monies better, which is what I think I've heard  
4 you say.

5 If we have the largest class sizes in the country,  
6 does that suggest we're not spending enough to lower class  
7 sizes?

8 MR. HUME: If you read the literature, at least what  
9 I've read, there is not a one-on-one relationship between much  
10 money you spend and how well the kids do.

11 Now, Honicheck of Ithica wrote this report, and maybe  
12 it's circulated in the wrong circles, but at least what it said  
13 is that spending more money doesn't necessarily equate to kids  
14 doing better. Until we find out that spending more money is  
15 going to improve the kid's performance, I wouldn't want to spend  
16 more money.

17 If you can show me that spending more money will  
18 improve the kid's performance, I'm willing to spend more money.  
19 But I just don't want to throw money over at the same direction  
20 I've thrown it in the past because I'm not sure it'll produce  
21 better results.

22 CHAIRMAN LOCKYER: So, class sizes would be one form  
23 of spending that you're, at least now, not persuaded is a good  
24 idea.

25 MR. HUME: Class size could be. More technology  
26 could be. Longer school days could be. Longer school year  
27 could be. And they all cost money.

28 CHAIRMAN LOCKYER: I guess most of the spending that

1 occurs in public schools is for salaries. Are they too low, too  
2 high, about right? Is there some change in the current spending  
3 of that sort that you would --

4 MR. HUME: I'm personally an advocate of merit pay.  
5 I would like to spend more money for teachers who really do a  
6 good job in terms of students and student performance. I think  
7 that is money well spent. They could be mentor teachers. I  
8 think that's getting a return on your investment where it has  
9 the greatest leverage. And that's been opposed.

10 CHAIRMAN LOCKYER: What money do you think is wasted?  
11 What money are we wasting or not spending well?

12 MR. HUME: You know, I really don't know. I mean, I  
13 think that the school budgets are -- and the accounts are so  
14 arcane that almost nobody can find out how the money's being  
15 spent. There is no standard chart of accounts that you can  
16 compare one school versus another school. I think that's a  
17 great weakness in the system.

18 I'd like to have one of the Big Eight firms come in  
19 and draw up a standard chart of accounts for all schools in  
20 California so that you can compare one school versus another as  
21 to how they're spending money. And then you'd tie that to the  
22 results, and then you'd see whether spending more money gave  
23 results.

24 CHAIRMAN LOCKYER: I'm looking at the Heritage  
25 Foundation comment on education.

26 MR. HUME: What was the date of that?

27 CHAIRMAN LOCKYER: It's '94.

28 MR. HUME: '94?

1 CHAIRMAN LOCKYER: Yes, last year.

2 MR. HUME: What was the date of -- it's quoting a  
3 speech; isn't it?

4 CHAIRMAN LOCKYER: No, no. This is their book.

5 MR. HUME: Oh, okay. Because they published a speech  
6 of mine, and I thought that was what you were talking about.

7 CHAIRMAN LOCKYER: Oh, I've seen that, too, yes. No,  
8 that was a speech about choice and things of that sort.

9 MR. HUME: Yes.

10 CHAIRMAN LOCKYER: That was one, I guess, when you  
11 were in your Utah-Colorado phase.

12 This essentially says their critique. You're on the  
13 board, right?

14 MR. HUME: Yes.

15 CHAIRMAN LOCKYER: How many things are you on the  
16 board of? I have ECTL. I guess that's concluded its work.

17 MR. HUME: I'm off that board because I said to  
18 Marian McDowell, I said, "Listen, I can't spend any more time on  
19 this stuff."

20 I'm on the CTC.

21 CHAIRMAN LOCKYER: The Teacher Credentialing, State  
22 Board of Ed.

23 MR. HUME: State Board of Ed. NAGB, National  
24 Assessment Governing Board, this thing I was involved in last  
25 week.

26 Foundation for Teaching Economics. I'm off the  
27 Academy board. That was a great absorber of time.

28 I run a company that manufactures onions, garlic,



1 potatoes, and beans. And as long as you guys keep eating  
2 onions, garlic, and potatoes and beans, I can afford to continue  
3 to come to Sacramento and spend time on the State Board. If you  
4 stop, then I'm in trouble. So, please do.

5 CHAIRMAN LOCKYER: I've been trying to help you.

6 But that's it in terms of these various boards, or  
7 what have you?

8 MR. HUME: Those are the serious boards, yes.

9 CHAIRMAN LOCKYER: Are there some nonserious ones?

10 MR. HUME: And I'm on the Business Roundtable. But I  
11 haven't been able to go any of the Business Roundtable meetings  
12 lately because the State Board interferes exactly; meets at the  
13 same time.

14 CHAIRMAN LOCKYER: This may be an example of an area  
15 in which maybe you disagree with Heritage. I was sort of  
16 curious about discovering somewhere in here, and I'll try to  
17 find it so I can be careful.

18 They talk about NESIC, the National Education  
19 Standards and Improvement Council, is that the one?

20 MR. HUME: Which has been deep-sixed, which isn't  
21 going to happen.

22 I mean, I was suggested to be put on NESIC, and I  
23 don't think NESIC -- NESIC is now, as I understand it, not going  
24 to happen.

25 CHAIRMAN LOCKYER: What happened to it?

26 MR. HUME: It became looked upon as such a  
27 potentially national formulation of standards and all this  
28 business that it wasn't going to happen.

1 CHAIRMAN LOCKYER: Don't you support national  
2 standards?

3 MR. HUME: I support standards, and the states can do  
4 with them what they will, but I'd like to be able to compare one  
5 state versus another. Therefore, you've got to have some  
6 national standard to compare it.

7 We developed consensus frameworks in, as I said,  
8 civics, history, and math, and science, and we have an  
9 assessment framework for those, and we have standards for those,  
10 and that's how you do the national assessment.

11 CHAIRMAN LOCKYER: I guess the Heritage group, at  
12 least, is critical of NESIC as the giant school board in the  
13 sky.

14 MR. HUME: Right.

15 CHAIRMAN LOCKYER: Senator Lewis, I believe, has some  
16 questions.

17 SENATOR LEWIS: Thanks.

18 Mr. Hume, I just want to kind of understand something  
19 you said previously relative to the voucher approach to  
20 education.

21 You made the commitment that as a member of the State  
22 Board of Education, and that as long as you're a member of the  
23 State Board of Education, you would do nothing to endorse or  
24 promote any kind of a --

25 MR. HUME: I would not become active, endorse,  
26 promote, or fund a voucher movement in California. That's my  
27 commitment, okay?

28 SENATOR LEWIS: There was a very poignant article

1 that I read in the L.A. Times this weekend. It was relative to  
2 a fundamental school that had been set up in the Santa Ana  
3 Unified School District in Orange County. It was a very  
4 interesting story, and it told the story about how parents had  
5 camped out for three days and three nights to be in line to get  
6 their children into this intermediate school.

7 Interestingly, it was not a story, as some would have  
8 you believe, of white Anglo-Saxon Protestants lining up to try  
9 to get their children into this kind of a school. It was  
10 really, if you looked at the picture in the paper, it was, you  
11 know, the faces of changing California -- Asians, Vietnamese,  
12 Hispanics -- that were all anxious to make sure that their  
13 children get in a really excellent school that's in Orange  
14 County.

15 As a member of the State Board of Education, as one  
16 who certainly thinks that education needs to be revitalized and  
17 energized, and new experiments tried, I would assume that you're  
18 in support of concepts like charter schools?

19 MR. HUME: I actually participated with Senator Hart  
20 and the Roundtable in the drafting of the legislation on the  
21 charter schools. We were very disappointed that it didn't go as  
22 far as we would like it to go, and it was limited to a hundred.  
23 I hope that some of the limitations will be taken off, as well  
24 as the quantity of schools, because I think you can do nothing  
25 but learn from successes out there. And parents, through the  
26 grapevine, will know about those successes.

27 SENATOR LEWIS: I agree, and I commend you, because I  
28 think we need to bring about an end to the cookie-cutter



1 approach to education, and we can certainly learn from diversity  
2 and experimentation.

3 I'm looking at a letter that's been mailed to the  
4 Committee in opposition to your appointment. And one of the  
5 things that the letter says is that one of your problems is  
6 that, and I want to quote this:

7 "His style is to raise numerous questions  
8 of a divisive nature."

9 And it goes on to say that you've done some things like passing  
10 out The Bell Curve material that was already mentioned. It  
11 says:

12 "Such activities demonstrate a lack of  
13 sensitivity that appointment to such a  
14 position demands, especially in a state  
15 such as California, with its broad  
16 cultural diversity."

17 I guess the first question I want to know is, do you  
18 appreciate or do you not appreciate California's broad cultural  
19 diversity?

20 MR. HUME: Well, in the audience is my wife who is a  
21 Hispanic, and I married a Chilean, and my kids are all  
22 bilingual. We have had a great deal of fun being bilingual.

23 So, you know, this is a good deal. I mean, for me to  
24 go down south and be able to speak with the taxicab drivers in  
25 Mexico or in Chile, that's fun.

26 SENATOR LEWIS: What about the accusation that you're  
27 insensitive. Are you an insensitive kind of guy?

28 MR. HUME: You know, as I -- they were talking about

1 I ask questions.

2 Do you know the questions I ask? I said, "In terms  
3 of bilingual education, I want to know how much money the  
4 state's spending on bilingual education, total; how much it's  
5 spending per student; what the results are per students; how  
6 many students are actually becoming bilingual as a result; and  
7 how many retain their bilingual capability after they get out of  
8 school."

9 Now, that was just an opportunity to get some  
10 information. Now, I would assume that those types of questions  
11 are threatening. But as a State Board member, I'm going to  
12 continue to ask questions like that.

13 It's only by getting answers to questions like that  
14 that you can determine where the money is spent, how well it's  
15 being spent, and if it should continue to be spent that way.

16 I mean, fishing in the back of my mind, I was asking  
17 myself: are we really getting value for the money we're  
18 spending?

19 Now, the fact of the matter is, I don't know how much  
20 money we're spending. The state doesn't allocate its resources  
21 so that they can determine how much money we're spending. They  
22 don't know how well the kids are really doing. I don't know  
23 what the criteria for exit from a bilingual program are. I  
24 mean, there are a whole bunch of unanswered questions.

25 If that's not being sensitive, well then, you're not  
26 enabling the State Board to ask questions that they should ask  
27 to determine how the money is being spent in this state.

28 SENATOR LEWIS: Apparently there are those that don't

1 appreciate the fact that you do ask questions.

2 Let me ask you, other than what you've said so far  
3 today, I'm not familiar with your company. Can you tell us a  
4 little bit more about it?

5 MR. HUME: Basic Vegetable was founded in California  
6 in the '30s, and it was in the dehydrated vegetable business.  
7 It employs worldwide about 5,000 people. It's onions and garlic  
8 in California. We have a plant in King City; workforce is  
9 predominantly Hispanic. I would characterize our employee  
10 relations as being quite good.

11 We have an employee scholarship program which I  
12 helped initiate where we send -- for any employee who wants to  
13 have his kids go to college, we underwrite it to the tune of  
14 \$1,000, because we feel strongly that a high school diploma  
15 doesn't mean a thing any more. Those kids have got to have  
16 college educations.

17 All you have to do is submit a form, and it's got to  
18 be checked off by the high school that your kid is going to  
19 school, and then it has to go to the school. It goes through  
20 some kind of -- some organization that checks on the school,  
21 knows whether the school is there. And we underwrite \$1,000 for  
22 the kid, because we feel strongly about education.

23 So, that's part of what I brought to my company.

24 We have a corporate giving program, and I have  
25 focused that corporate giving program on education. I've said  
26 that that's probably where you have the greatest leverage. And  
27 so, we have supported computers, and Little League, and baseball  
28 diamonds, and you know. I don't care, you ask it, we've done



1 it.

2 We make money. I like to make money. It helps me  
3 sleep at night. We are profitable. We're privately held, and  
4 we have factories in California, Wisconsin, Washington, Idaho,  
5 New Mexico, Massachusetts, and Poland.

6 SENATOR LEWIS: Poland.

7 MR. HUME: Poland is a real venture, let me tell you.  
8 It is a real venture. I mean, it's been fun, but Poland is the  
9 second largest potato grower in the world, and they don't know  
10 how to store potatoes.

11 SENATOR BEVERLY: Let's stay in California.

12 [Laughter.]

13 SENATOR LEWIS: I just want to make the comment,  
14 Mr. Hume, that you're Chairman of the Board of a worldwide  
15 company that has 5,000 employees. You're involved in the  
16 California Roundtable. You've been involved in all these  
17 educational organizations. You're sacrificing your time to  
18 accept this appointment.

19 I just think it's marvelous that someone who  
20 obviously has so many commitments as you do is willing to lend  
21 your expertise to the State of California, and I, for one,  
22 appreciate it. And I wish you well today.

23 SENATOR BEVERLY: Any further questions by any Member  
24 of the Committee? Senator Ayala.

25 SENATOR AYALA: Second time around.

26 On bilingual education.

27 MR. HUME: Como esta?

28 SENATOR AYALA: Bien.

1 MR. HUME: Vamos hablar.

2 SENATOR AYALA: You're okay.  
3 [Laughter.]

4 SENATOR AYALA: You've got a lot of class, I want to  
5 tell you that. You're bilingual.

6 You questioned the need, not really, but the good  
7 it's doing to spend all this money for bilingual education.

8 Just on a personal note, I was raised by my  
9 grandparents who didn't know English. When I started school, I  
10 didn't know English. The teachers didn't know Spanish. I went  
11 to a segregated school strictly with kids of Hispanic parents  
12 who didn't know a bit of English. The teachers didn't know  
13 Spanish. What a mess.

14 I guess I must have been in the third or fourth grade  
15 before I could raise my hand and say, "Teacher, I want to go to  
16 the bathroom," or something like that. It was totally a  
17 disaster.

18 I think that you shouldn't blame the students because  
19 their parents either don't know, they don't understand, or they  
20 don't care. You're hurting the students when you do that.

21 If you want to know how much good it has done, well,  
22 I'm here asking you questions. That's how much good it has  
23 done, that I was able to get bilingual education.

24 Now, I don't support the theory that public schools  
25 should support the history of the country where the students  
26 came from or the culture; that's up to the parents to pay for  
27 that if they want to do that. Schools couldn't possibly teach  
28 the kids their culture, there's so many in this state.

But I support bilingual education to the point where

1 you convert the students to the mainstream so they can challenge  
2 kids on the mainstream, and bring them over to English.

3 But don't penalize the kids because the parents don't  
4 know, they don't care, they don't understand the issue here.  
5 Help the kids.

6 It helped me. I'm here asking you questions, and I  
7 didn't know English when I started school. That's how good it's  
8 done me in terms of bilingual education.

9 MR. HUME: You know, it's been a fun thing in my  
10 life, being able to participate in other languages.

11 But in terms of the way bilingual education is done  
12 in California, we were just asked by the CTC -- I think I'm  
13 correct in this -- there is a new bill that says teachers can  
14 qualify for bilingual education certificates with 40 hours. And  
15 they want to have -- kids who are in bilingual education, they  
16 want to increase it from five years to seven years, because  
17 that's what they get.

18 So, I asked the question, I said, "Hey, listen.  
19 You're saying a teacher can be qualified for bilingual education  
20 after 40 hours, and yet you've got to take seven years for the  
21 kids to be bilingual education. There's an inconsistency  
22 there."

23 And the audience sort of -- sort of chuckled when I  
24 said that. That's the type of question I'm asking.

25 I don't understand what they're really doing. And I  
26 don't know -- you know, this is a complicated issue, and it's  
27 really not one of the issues I'm focusing on. I'm more  
28 interested in assessment than I am in bilingual education.



1           SENATOR AYALA: Some of the more super patriots in  
2 this country who think that being bilingual is undemocratic.

3           I think that an educated person knows many languages;  
4 the more the merrier. I wish I knew more than just two so I  
5 could speak to you in a language you don't understand. I can't  
6 do it today, and I'm sorry.

7           Thank you.

8           CHAIRMAN LOCKYER: I guess the cutting debate, the  
9 issue of the moment in the bilingual domain is primary language  
10 instruction. That is, do they start in the language which is  
11 their primary language and shift to both or English, or do they  
12 get immersed in English and adjust.

13          Do you have any reflections on that debate?

14          MR. HUME: No, I really don't have. I don't have any  
15 intelligent understanding of the issue.

16          CHAIRMAN LOCKYER: Well, I must say as a general  
17 matter, it's impressive that you would care to learn the facts  
18 before you developed an opinion.

19          That's not what we do in this culture. We usually  
20 have opinions, and then find the fact that justifies whatever  
21 the belief system it was.

22          Maybe that's your business training, to be reality  
23 testing everything.

24          You mentioned the voucher issues in Oregon and  
25 Colorado, and that voters seemed to vote no because of the  
26 potential loss of funding to public schools and the church-  
27 state disagreements that were part of that.

28          While that was an analysis of what the voters might

1 have been thinking, what were you own thoughts about both?

2 Would it have diminished --

3 MR. HUME: I was a major funder in both areas, and  
4 how many times do you have to get a bloody nose to say, "Hey,  
5 I'm not interested in this any more?" And you've got to look at  
6 the reason why.

7 CHAIRMAN LOCKYER: What does "major" funder mean?

8 MR. HUME: Over \$50,000.

9 CHAIRMAN LOCKYER: In each?

10 MR. HUME: Yes.

11 CHAIRMAN LOCKYER: I'd say that's major.

12 But you haven't changed your opinion, only the sort  
13 of view that voters aren't going to buy that.

14 MR. HUME: I still believe that if you can get the  
15 incentives right, however you get the incentives right, you're  
16 going to be okay.

17 I don't know how you get the incentives right unless  
18 the performance of the kids is somehow tied with the way in the  
19 which the organization is rewarded. I don't know any other way.  
20 That means a financial reward.

21 So, if you can figure out how to keep it within the  
22 closed system it is right now and give a financial reward if the  
23 kids do very well, I'm all for it. But right now, that's not  
24 connected.

25 Now, in Kentucky, Tom Boysen should tell you what  
26 they've done in Kentucky. They provided financial rewards for  
27 schools when the schools do well, and penalties when they do  
28 badly. I mean, Tom -- you've got a real resource in the

1 audience right now who can tell you how to use incentives to  
2 motivate schools. That's why I'm bringing -- I'm asking Tom to  
3 come out and talk.

4 CHAIRMAN LOCKYER: We will, it's just that he's not  
5 up for confirmation; you are.

6 [Laughter.]

7 MR. HUME: It gives you an idea, you know, of the  
8 changing of the dynamic.

9 CHAIRMAN LOCKYER: Let me ask you about the Heritage  
10 Foundation.

11 MR. HUME: Yes.

12 CHAIRMAN LOCKYER: I'm trying to figure out what's  
13 their philosophy, and what are things that you personally would  
14 find persuasive. I haven't had a chance to really do a complete  
15 study what Heritage does, or what their work may be. You may  
16 well know more about that than I.

17 MR. HUME: You don't want to. I mean, nobody can.  
18 They generate so much stuff, you can't imagine.

19 I think they believe in limited government,  
20 empowerment of the individual, if you want to look at the core  
21 of what Heritage is all about.

22 I think they try and influence activities on the Hill  
23 by writing position papers, analyzing legislation. I mean, they  
24 did a good analysis of the health care issue and came up with  
25 something less federally run than the administration's proposal.

26 CHAIRMAN LOCKYER: With respect to education, I know  
27 you're emphasized your belief that core curriculum needs  
28 emphasis.



1 MR. HUME: Yes.

2 CHAIRMAN LOCKYER: I guess that may be invoked by  
3 their observations about curriculum controversy, in which the  
4 Heritage points out that there tends to be -- well, to quote:

5 "There's plenty of of classroom time for  
6 the latest political fads."

7 And they suggest that in the '80s, there was too much  
8 environmental extremism and multiculturalism. An example given  
9 of the former is that all students in some curricula make  
10 environmentally sound decisions in their personal and civic  
11 lives. Example, recycling.

12 Do you have any reaction to those thoughts?

13 MR. HUME: I don't know who's writing for the  
14 Heritage now. Maybe Alison Tucker. She was the --

15 CHAIRMAN LOCKYER: Peter Ferrera.

16 MR. HUME: I don't know him. Alison Tucker ran that  
17 education thing before --

18 CHAIRMAN LOCKYER: She's mentioned in the footnote as  
19 their expert.

20 MR. HUME: Yes, and before that it was Jeannie Allen.  
21 You know, some of the things that Heritage writes I  
22 agree on; some of the things I don't.

23 I haven't read that and given it any thought. In  
24 fact, I sort of stopped reading their education stuff because I  
25 didn't think that it was going anywhere.

26 CHAIRMAN LOCKYER: So again, sort of what works test,  
27 or something of that sort.

28 MR. HUME: Of Heritage?

1 CHAIRMAN LOCKYER: No, your own reaction to these  
2 debates. That is, here's another comment they make, and maybe  
3 this is one you seem to indicate some agreement with:

4 "The evidence clearly shows that reform  
5 based on increased and equalized spending,  
6 higher teacher salaries, smaller classes,  
7 and similar marginal changes does not  
8 work because they're not related to school  
9 performance or school achievement."

10 MR. HUME: What's the footnote there? I'll bet you  
11 they quote Honicheck.

12 CHAIRMAN LOCKYER: Well, that's mentioned, yes, as  
13 well as some other studies. That's part of the evidence.

14 "Only fundamental reform centered around  
15 school choice can reverse the  
16 deteriorating performance."

17 And then they go on to say, you know, what we've seen in terms  
18 of vouchers; private religious schools should be allocated  
19 funds; teacher certification requirements should be relaxed, or  
20 better still, abolished.

21 Any comments about any of those thoughts?

22 MR. HUME: No.

23 CHAIRMAN LOCKYER: You don't have opinions about  
24 these things?

25 MR. HUME: I'm not a clone of the Heritage as far as  
26 my opinions are concerned.

27 Really my focus at this point is what I've tried to  
28 lay out in the report. I mean, if I can get standards, and the

1 use of time, and teacher assessment, I think we will make a lot  
2 of progress in California. That's where I put my efforts.

3 One thing about being on the State Board is, you  
4 don't have time to read all the stuff that comes across your  
5 desk because you read all the stuff the State Board sends across  
6 your desk.

7 CHAIRMAN LOCKYER: That's true.

8 What I'm trying to learn is your opinion and  
9 philosophy with respect to some of these issues. I mean, you  
10 come here as someone with credentials as extremely partisan, a  
11 major donor to virtually every Republican campaign that's ever  
12 occurred in recent years in California, to the term limit  
13 initiative, to Maureen DiMarco's campaign.

14 You serve on the Board of Heritage Foundation.  
15 That's some baggage. It's ideological baggage that I think  
16 makes it fair to try to understand what are your own personal  
17 opinions.

18 So that this is not a birds of a feather flock  
19 together analysis, I'm trying to distinguish you from the rest  
20 of the flock.

21 MR. HUME: Sure.

22 CHAIRMAN LOCKYER: And I haven't discovered it yet.

23 MR. HUME: I tried to pretty well, you know, as I  
24 say, I did this when I was coming back on the plane because I  
25 haven't had time.

26 I tried to reflect in these remarks what has brought  
27 me to where I am as far as education, and what I'm going to try  
28 and do if I'm elected. I'm going to try very hard to focus on



1 assessment, to focus on the use of time, to look at teacher  
2 credentialing. I think those are leverage issues.

3 I don't think we can afford to spend our time on  
4 other areas when you've got the chance to do that.

5 I think really working with you and the Legislature,  
6 and the Governor, and I think I can work with you all, is going  
7 to cause us to cause something to happen.

8 And I think you need somebody who's going to come and  
9 challenge the conventional way of doing things, which is  
10 threatening to a lot of people who are benefiting from the  
11 status quo that is going to look at it a different way.

12 So, you know, I've given you a glance at my inner  
13 soul in ways that other people haven't had, as you well know.  
14 So, I don't what else I can say.

15 CHAIRMAN LOCKYER: Last fall, at one of the Board  
16 meetings, you introduced folks working with the Edison Project.

17 MR. HUME: Yes, in December.

18 CHAIRMAN LOCKYER: Yes. Of course, part of that  
19 undertaking involves Channel One.

20 MR. HUME: Yes, right.

21 CHAIRMAN LOCKYER: That is, the Chris Whittle school  
22 programs with commercial advertising.

23 Do you agree with that concept?

24 MR. HUME: Well, that's since gone broke.

25 I think the schools got some free use of free  
26 equipment. And, you know, it was paid for by two minutes of  
27 advertising and ten minutes, or whatever the ratio was.

28 But the schools that wanted it could take advantage

1 of it. The schools that didn't want it didn't have to take it.  
2 They weren't forced to take it. They weren't forced to turn it  
3 on once they got it.

4 So, I think that was a win-win situation for the  
5 schools.

6 CHAIRMAN LOCKYER: I think it'd probably be  
7 appropriate to ask people to comment or testify that are present  
8 that would wish to. First, anyone that's here in support of  
9 confirmation, please just come forward.

10 MR. MALKASIAN: I'm Bill Malkasian, member of the  
11 State Board of Education. I was here two months ago.

12 I'm not going to repeat everything that has been said  
13 about Mr. Hume.

14 CHAIRMAN LOCKYER: Thank you.

15 MR. MALKASIAN: So, my presentation will be very  
16 short.

17 I did try to get him to talk about Socrates and Homer  
18 instead of Tennyson, but he doesn't listen, and Rodriguez, but  
19 he doesn't listen.

20 SENATOR PETRIS: He covered it. He raises questions  
21 that make people ponder and react, maybe impose.

22 MR. MALKASIAN: What I wanted to say, there was a  
23 question asked about bilingual education.

24 Just recently at one of our Board meetings, we had a  
25 large contingent from Central and Southern California come up  
26 because the rumor was that the State Board wanted to do away or  
27 was opposed to bilingual education.

28 And I watched, which I do a lot of, the Board

1 members' reactions. And I watched Mr. Hume's reaction. And  
2 Mr. Hume's representation to make them feel that that was not  
3 so; the rumor was not so. That the Board was for bilingual  
4 education, and it wasn't about to do away with it.

5 When he finished discussing the problem with these  
6 people, and speaking in their language, after the Board meeting  
7 was over, these people mobbed him in appreciation and  
8 understanding, and genuinely understanding his attitude, which  
9 made them feel comfortable.

10 Now, Senator, I, too, went to school and couldn't  
11 speak English when I first went to school. I, too, could not  
12 speak English when I first went to kindergarten.

13 SENATOR AYALA: I thought you had a lot of class when  
14 I first saw you.

15 MR. MALKASIAN: But I watched Mr. Hume's actions. He  
16 does raise a lot of pointed questions, and he does ruffle a few  
17 feathers.

18 We've had some heavy discussions on assessment, on  
19 school time, because I come from the educational field. I was a  
20 principal.

21 CHAIRMAN LOCKYER: We remember.

22 MR. MALKASIAN: I make statements such as, I think we  
23 ought to give the power to the site administrators because  
24 they're the ones that are controlling the educational process of  
25 the youngsters that are in their schools, and hold them  
26 accountable.

27 We talk about a lot of different things. And my  
28 whole philosophy is, I learned a lot from Mr. Hume outside of



1 the educational complex. And so, I think it would be a shame  
2 not to approve Mr. Hume.

3 He brings a lot of thought, a lot of knowledge that  
4 we don't have. We talk about partnership in education and  
5 industry and business; he brings that. He has -- the baggage he  
6 brings is excellent.

7 So, I would hope that all of you would see it in your  
8 minds to approve his nomination.

9 Thank you.

10 CHAIRMAN LOCKYER: All right, next.

11 MR. GONZALEZ: Mr. Chairman, I have a very, very  
12 short statement to read.

13 My name is Mike Gonzalez. I'm a native of Solano  
14 County.

15 I have known Jerry Hume for over 30 years, and  
16 heartily endorse his appointment to the California State Board  
17 of Education.

18 In all my experience with Jerry, he has been  
19 concerned about the education of our young people since the  
20 1970s. He has thoroughly researched and familiarized himself  
21 with the aspects of the educational system, and is dedicated to  
22 applying this knowledge for the betterment of California's  
23 students.

24 I am not an educator. I'm a retired businessman and  
25 farmer.

26 As a successful businessman, one of Jerry's prime  
27 concerns is that the young people are increasingly unable to  
28 compete in the world marketplace.

1           Jerry is a very compassionate man. He's a hard  
2 worker. He would bring something to the Board that is very  
3 essential today.

4           Being well aware of his enthusiasm and energy for the  
5 improvement of our school system in California, I know he will  
6 be an asset to the Board of Education.

7           Thank you very much for your time.

8           CHAIRMAN LOCKYER: What kind of farming do you do?

9           MR. GONZALEZ: Well, just row crops. I'm a native of  
10 Solano County, third generation.

11           I'm Hispanic decent, Mr. Ayala. My family were  
12 immigrants.

13           CHAIRMAN LOCKYER: What kind of farming do you do?

14           MR. GONZALEZ: Used to have orchards, peaches and  
15 pears.

16           But I understand what you're talking about when you  
17 mentioned about not being able to speak. My family were  
18 immigrants. They migrated from Spain to Hawaii. They worked in  
19 the cane fields, came to California in the late 1800s. The  
20 first thing they did, they learned how to speak English. I'm  
21 very proud of that.

22           CHAIRMAN LOCKYER: How do you know Mr. Hume for 30  
23 years?

24           MR. GONZALEZ: Well, I lived in Vacaville. That's  
25 where Jerry had his plant. So, we've become --

26           CHAIRMAN LOCKYER: Is that one that smells like  
27 onions?

28           MR. HUME: That's right. That's the Hume's fumes.

[Laughters.]

CHAIRMAN LOCKYER: I know the one.

MR. GONZALEZ: Unfortunately, the plant's gone, so we miss -- you don't get that odor going through Solano County.

CHAIRMAN LOCKYER: When you drive Highway 5, it's a different odor.

MR. GONZALEZ: It is.

But thank you so much for your time, and give Jerry every consideration because his heart's in the right spot. Thank you very much for your time.

CHAIRMAN LOCKYER: I'm not worried about his heart. I'm worried about his head.

MR. GONZALEZ: I want to tell you something; may I? As you all know, Jerry's a Republican.

CHAIRMAN LOCKYER: I did know that, yes.

MR. GONZALEZ: I thought you did.

I want you to know I'm a Democrat. You ask Tom Hannigan.

Thank you very, very much.

CHAIRMAN LOCKYER: Maybe the Governor will appoint you, sir. Actually, he rarely appoints Democrats, so we never even have to look.

Next.

DR. NICHOLS: I've written a prepared statement. My name is Dr. Reginald Nichols. I'm President and Head Master of Fellowship Academy in San Francisco, which is an independent pre-school through eighth grade, dedicated to training urban minority leadership.



1           It is my pleasure to speak on behalf of my friend,  
2 Jerry Hume. I met Jerry over four years ago when he was  
3 introduced to our school. Since that time, as we have gotten to  
4 know each other, I can certainly speak for his character and  
5 commitment to equal and quality education for all children in  
6 California and the nation.

7           Jerry's character, I listed a couple of things that  
8 stand out to me. His empathy and genuine concern about the  
9 future of education. He's an action oriented person. He's  
10 proactive, as you can tell, instead of reactive.

11          He's open. He's willing to work, willingness to  
12 think new thoughts and come up with ideas and suggestions, and  
13 he's a team player.

14          I think, again, for me, our dialogue about the  
15 commitments to quality education, as a principal for 13 years in  
16 an independent school that serves predominately African-American  
17 and Hispanic children, Jerry did not have to be involved at all  
18 with our school or what we do. But in dialoguing with him, our  
19 conversations were: how can we make sure that urban minority  
20 children can compete successfully in the future?

21          His interest and commitment to urban and minority  
22 education is noteworthy. He could have absolved himself from  
23 all responsibility in that regard, but he's a strong advocate  
24 and supporter of equal access to quality education and  
25 opportunity.

26          His record of service on various boards and  
27 committees and panels speak for itself. Sometimes he takes a  
28 leadership position, but he's equally content playing a

1 background role as long as the dialogue continues and action is  
2 taken.

3 He believes that all children should have equal  
4 opportunities to successfully compete in the world marketplace.  
5 He's been involved in our school by introducing us to a variety  
6 of people who have similar interests, and by supporting our work  
7 through his own hard work. He believes, like myself, that the  
8 only way to revitalize our cities, our nation, and our world is  
9 to invest in education.

10 I thank you for allowing me to speak on behalf of  
11 Jerry Hume, and I know he'll be a tremendous asset to the State  
12 Board of Education.

13 CHAIRMAN LOCKYER: Senator Lewis.

14 SENATOR LEWIS: Would you tell me a little bit more  
15 about your school? Did you say the youngsters in your school  
16 are predominately African-American?

17 DR. NICHOLS: Yes, 80 percent African-American, and  
18 about 15 percent Hispanic.

19 SENATOR LEWIS: And it's K through 8?

20 DR. NICHOLS: Pre-school through 8, yes.

21 SENATOR LEWIS: How long has it been in existence?

22 DR. NICHOLS: Fourteen years.

23 SENATOR LEWIS: How do your students compare on a  
24 national or state level in terms of test scores?

25 DR. NICHOLS: We take the Comprehensive Test of Basic  
26 Skills. The students perform in the 70th -- the 75th  
27 percentile and better on the CTBS test.

28 We take them from all -- the school was started to

1 give quality education to African-American and Hispanic students  
2 specifically who were -- for parents who were a little concerned  
3 about the performance criteria in the public school, and at the  
4 same time, couldn't afford the \$10,000 bill for private school.

5 So, our school charges \$2400 a year. Most of my  
6 activities right now are raising money to make sure that the  
7 school runs. The average cost per student is similar to the  
8 average per student in the public schools.

9 SENATOR LEWIS: And Mr. Hume is active in  
10 fundraising?

11 DR. NICHOLS: No, Mr. Hume is active in counseling,  
12 dialogue, those types of things. I think the energy -- and  
13 talking about how -- what is the best way to get kids into the  
14 marketplace; what do they need to compete.

15 So, he's a friend, and we have dialogued about what  
16 the future looks like. How we can get business, and business  
17 and school partnerships, those types of innovative ideas that we  
18 need to consider, especially for urban children.

19 SENATOR LEWIS: In your dialoguing with Mr. Hume,  
20 have you ever found yourself disagreeing with him?

21 DR. NICHOLS: No, because I find his heart is in the  
22 right place. I mean, the initial dialogue was how to get  
23 children, especially urban children, which is my heart, how to  
24 get them from this point to this point so that corporations like  
25 IBM, Xerox don't have to spend millions of dollars to train  
26 entry level children -- entry level workers, and how to cut down  
27 on prisons spending millions of dollars to keep people in  
28 prison. I mean, that was the nature of our dialogue.



1           Invest the money early on in children, so that their  
2 lives can be different, so that our communities can be  
3 different, so our world can be different.

4           So, I haven't had a chance to disagree with him  
5 because we have talked about similar issues, and that's where  
6 our hearts connect, on how make this education thing work.

7           SENATOR LEWIS: Thank you.

8           CHAIRMAN LOCKYER: How did you feel about the voucher  
9 proposal?

10          DR. NICHOLS: I felt comfortable about it in the  
11 beginning. I asked our parents, you know, how they felt about  
12 the voucher initiative. The concern was quality education; how  
13 can we make sure.

14          I only serve 225 to 250 children. There are a lot of  
15 children in the public sector that are not -- well, I can't fit  
16 them in my school. So the concern was, how can we make sure  
17 that all of the children are educated.

18          In the beginning, I think I was like Jerry. I was  
19 very much for a voucher-type initiative. But at the same time,  
20 I need to make sure that all children receive a quality  
21 education.

22          My colleagues in the public schools, I said, "Look, I  
23 don't mind that you close me down. I just want all the kids to  
24 get a quality education."

25          And we have models of that. Why can't those models  
26 be replicated all over the place? Why do parents and families  
27 that I associate with, why do they have to be concerned and go  
28 down to the Board of Ed. to file petitions to go to other

1 schools because their neighborhood schools are so bad?

2 So, that was the concern with the voucher, how to get  
3 quality education for all children.

4 CHAIRMAN LOCKYER: Do you think maybe you see a more  
5 committed parent because they're willing to find your school and  
6 pay --

7 DR. NICHOLS: Everybody asks me that.

8 CHAIRMAN LOCKYER: -- a couple hundred bucks a month?

9 DR. NICHOLS: Everybody asks me that, and whether we  
10 pick the cream of the crop.

11 I say, look, it's education's responsibility to make  
12 the cream of the crop.

13 These are the same parents that come out of public  
14 schools frustrated, frustrated with public schools, public  
15 education because their kids are not getting it. They are  
16 sending their kids to school, and they're coming back, and the  
17 children are not doing well.

18 I think the level of parents -- well, I've got  
19 similar problems. As I talk to my colleagues in public school,  
20 you know, there's similar problems, making sure that people are  
21 out at PTA meetings, you know. We have a little grist, but let  
22 me you, if I weren't doing a good job with kids, they would not  
23 send their kids to my school.

24 I think that's what Jerry's talking about, because  
25 there's an accountability factor.

26 CHAIRMAN LOCKYER: How many kids?

27 DR. NICHOLS: We have between 225 and 250,  
28 pre-school through eighth grade.

1 CHAIRMAN LOCKYER: What would be a typical class  
2 size?

3 DR. NICHOLS: We try to keep our class sizes to 20.

4 CHAIRMAN LOCKYER: Are you successful?

5 DR. NICHOLS: Oh, yes, we are. In middle school, we  
6 have 25. We asked the teacher to -- for any child over 20, it's  
7 definitely asking the teacher, what can we do with that, whether  
8 he wants or she wants to increase the class size.

9 It's very hard, because that means I have to --  
10 raising money, making sure those things work is very difficult,  
11 but we have parents that line up at the door to get their  
12 children in because of quality ed.

13 CHAIRMAN LOCKYER: What are your primary grade class  
14 sizes?

15 DR. NICHOLS: They're 20.

16 CHAIRMAN LOCKYER: I'd recommend some more dialogue  
17 between the two of you at your own time about the class size  
18 issue.

19 Senator Petris.

20 SENATOR PETRIS: What other differences are there,  
21 other than class size, between your school and the public  
22 school?

23 DR. NICHOLS: I think it's -- I teach at the  
24 University of San Francisco, School of Effectiveness in the  
25 summer, so I have joint faculty. And what I tell the principals  
26 in training is, you've got to get everybody on the same page in  
27 the school. I believe that the site administrator, the  
28 teachers, the parents, the community all have to work together



1 in some cooperative fashion so that the children can get the  
2 quality education. And that's not an easy thing.

3 But to me, the difference is for our school, I feel  
4 that the climate and the teachers, myself, and the parents, for  
5 the most part, are on the same page. The parents, the average  
6 income for the parents at our school is \$20,000-25,000. So,  
7 these people are paying money, \$240 a month, to send their kids  
8 there, and it's a strain. The parents themselves raise  
9 \$65,000-70,000 a year to assist with the education of their  
10 children. That's a strain.

11 But evidently, they feel that we're all on the same  
12 page. And I think that's the critical point.

13 When you look at those schools, and there are lots of  
14 public schools all over this nation that are doing a great job  
15 in education, and when I've had the opportunity to talk to some  
16 of those principals, they're doing a similar thing like we're  
17 doing. The teachers, the parents, the community, they're all on  
18 the same page, and kids get a quality education.

19 SENATOR PETRIS: Who's not on the page in our local  
20 area? Teachers?

21 DR. NICHOLS: No, I think there's a mixture. I think  
22 the parents -- some of the parents are afraid of what they deem  
23 as closed systems. I think some of the teachers are afraid of  
24 the children. I think those types of dynamics really cause  
25 people not to be on the same page.

26 SENATOR PETRIS: I find that puzzling. The ones that  
27 come to you from the public schools because they're frustrated,  
28 are they on the public school page?

1 DR. NICHOLS: I think they have tried. I think they  
2 have tried. A lot of them become frustrated because their  
3 children are getting high grades, A's and B's, but they don't  
4 feel their kids are learning. They don't feel that their  
5 children are reading the way they should. They don't feel --  
6 you know, those types of things.

7 So, I don't know which -- they don't seem to be on  
8 the public school page, but I think they have tried, because all  
9 parents, I feel, want their kids to have a good education.

10 SENATOR PETRIS: Every educator from the public  
11 system that's come before this Committee has told us that  
12 they're always reaching out, trying to get the parents to come  
13 in. They don't have much success. There are a lot of parents  
14 who come in, but there's an awful lot who don't.

15 DR. NICHOLS: Right.

16 SENATOR PETRIS: I'm trying to untangle this. Is it  
17 the parent who won't accept the invitation to go visit the  
18 public school that says, "I'm not on the page," and then comes  
19 to you and says, "I want you to do better"? I don't understand  
20 it.

21 DR. NICHOLS: I think even if a parent has a teacher,  
22 and the teacher and the parent -- let's say a third grade  
23 teacher and a parent of a third grade child, they might be on  
24 the same page in that grade, but when the child goes to fourth  
25 grade, they're not on the same page.

26 So, the whole system is not cohesive, and you have  
27 parents that are willing to work with a certain teacher, really  
28 enjoy that teacher for that certain grade, but the next grade,

1 not only does the teacher themselves have problems with the  
2 teacher in the next grade, but the parents do also. That's  
3 where -- might be the level of frustration.

4 So, it's not school-wide. And in the schools that  
5 really do a good job, the schools that are really -- there are  
6 public schools where people line up to go into the school. What  
7 is it about those schools? Those schools have teachers,  
8 administrators, parents, people on the same page.

9 And I think there is an accountability issue.  
10 There's an accountability issue when people are not on -- when I  
11 have a parent who's disgruntled or disappointed. They know they  
12 can talk to me; they know they can talk to the teacher, and  
13 let's see what we can do to work this out because I want the  
14 child to graduate from my school doing very well.

15 CHAIRMAN LOCKYER: Do you administer IQ tests to your  
16 students?

17 DR. NICHOLS: No.

18 CHAIRMAN LOCKYER: Why not?

19 DR. NICHOLS: I believe that the IQ tests do not test  
20 any intelligence, and I believe that they are biased. I do  
21 believe that there is a bias to them, ethnic and/or racial bias.  
22 So, we don't use those tests.

23 It's even hard to use the standardized tests because  
24 -- it's even hard to use standardized tests. If the children --

25 CHAIRMAN LOCKYER: Because of bias?

26 DR. NICHOLS: Because of bias, and because also, I  
27 think, test mechanisms, for me. There's a tremendous breadth of  
28 oral tradition in certain communities, and these tests don't



1 even test the depth of that.

2 So, I have problems with the tests, but we use them.

3 CHAIRMAN LOCKYER: You've touched on two things that  
4 raise concerns for me. One is a flirtation with Bell Curve by  
5 the appointee, and the second is, I think, an over enthusiasm  
6 about the value of standardized testing and how much change that  
7 will create.

8 DR. NICHOLS: I think there does need to be some  
9 mechanism for assessment. We -- at Fellowship, we try to use  
10 the mechanism that's out there, but there needs to be some  
11 mechanism for assessment, not only for us to assess our  
12 progress, but also for the parents to assess how good we're  
13 doing.

14 So, I think there needs to be some mechanism, and  
15 Bell Curve is another issue.

16 CHAIRMAN LOCKYER: I understand. Thanks for your  
17 comments.

18 Are there others present who would wish to comment in  
19 support?

20 Is there opposition that would wish to testify at  
21 this time?

22 MR. WELLS: I'm Bob Wells from the School  
23 Administrators Association.

24 I trust that you all have received our letter, and I  
25 won't read that for you or spend a lot of time on the details of  
26 that.

27 I'd just like to start off by saying that I've found  
28 Mr. Hume to be a personable, likable guy. And I'll say for

1 myself that I miss the aroma of onions when I drive through  
2 Vacaville. I may love onions more than everybody, but I thought  
3 that was terrific, and I've missed it.

4 But in his service on the State Board, we are  
5 concerned. As I said in our letter, the State Board of  
6 Education is becoming a more and more important body, especially  
7 in light of the court cases over the last few years that vest in  
8 the State Board all of the policy making authority over  
9 education except for those areas where you have specifically  
10 legislated away their control. So, we view this as a very  
11 important position.

12 To have someone in that position who philosophically  
13 believes in vouchers, to us that's a statement of nonbelief in  
14 the public school system that we believe is the very foundation  
15 of our democratic society.

16 Mr. Hume's also been quoted as saying that vouchers  
17 are essential in order to, in essence, leverage us to reform  
18 ourselves; that reform will only happen if we have vouchers  
19 there. We absolutely disagree with that.

20 I've only been involved in this business for about 15  
21 or 16 years. And in my time, not only has ACSA been supportive  
22 of school reform, but the entire school community has come  
23 together a number of times and pushed an aggressive reform  
24 agenda.

25 And in fact, we have a large body of evidence that  
26 the reforms that we have pushed have worked. They make a  
27 difference for our students, especially if you look at the  
28 history after SB 813, where we invested in teacher training; we

1     lengthened the school year; we invested in more textbooks and  
2     other provisions that we thought would make a difference. We  
3     set some high goals for ourselves in terms of measurable kinds  
4     of changes in student performance. Test scores went up,  
5     enrollment in difficult courses went up, the dropout rate went  
6     down.

7             We know still today the kinds of reforms that we need  
8     to make, and we're anxious to make them. There's no reluctance  
9     on our part. We don't need vouchers out there as a lever or a  
10    threat to us.

11            And having someone believe in those things, sit on  
12    the policy making body that governs the schools, is a real  
13    concern to us.

14            We're opposed to the confirmation.

15            CHAIRMAN LOCKYER: Senator Lewis.

16            SENATOR LEWIS: Would there ever be a candidate for  
17    confirmation to the State Board of Education that might be  
18    supportive of vouchers that you would not be in opposition to?

19            MR. WELLS: I don't know. I always say: never say  
20    never or ever.

21            SENATOR LEWIS: Has there ever been one in the past?

22            MR. WELLS: No.

23            SENATOR LEWIS: My recollection is that a lot of  
24    people used to criticize President Reagan for supposedly having  
25    a litmus test on judicial appointments.

26            Don't you have a litmus test when it comes to a  
27    person's philosophical belief in choice in education?

28            MR. WELLS: We don't, no. We have nothing either in



1 writing or not that directs that.

2 We do look at every appointment on its own. We  
3 consider the history and materials that we can collect, and we  
4 solicit materials from outside our own organization.

5 And I think it's -- there's only been a handful of  
6 gubernatorial appointments that we ever have opposed, and it  
7 happens to be in a couple of those cases the voucher was a key  
8 component of that.

9 But there are other reasons to object confirmation.  
10 And again, forever's a long time, and I don't know what'll  
11 happen in the future, if there might be a voucher supporter.

12 SENATOR LEWIS: You let me know when the day comes  
13 that you want to do so.

14 MR. WELLS: Sure.

15 CHAIRMAN LOCKYER: Actually, there haven't been many,  
16 at least while I've been here. I think we haven't had a nominee  
17 that was supportive of the voucher proposal.

18 We've had three or four come through who weren't, but  
19 not ones that were advocates, as I recall.

20 Anything further? Next, please.

21 MS. MICHAELS: Hello, I'm Judy Michaels from the  
22 California Federation of Teachers.

23 We're opposed to this appointment primarily because  
24 of Mr. Hume's stand on the voucher. We don't believe in public  
25 funds going into privatizing education.

26 I'd like to say, Senator Lewis, that like you, I've  
27 spent many years as a resident of Santa Ana. I'm quite  
28 familiar with the Santa Ana Unified and the many reforms that

1 have been initiated in that school district. And all of those  
2 have been done without the voucher and without charter schools.  
3 Fundamental schools are part of the public school system, and  
4 there have been a lot of improvements in test scores without  
5 doing that.

6 SENATOR LEWIS: It's a great first step.

7 MR. MICHAELS: Yes, it is.

8 And I'm happy to see the rising in the test scores  
9 over there.

10 Anyway, those are our major reasons, and I won't  
11 belabor the Committee any more.

12 CHAIRMAN LOCKYER: Thank you.

13 SENATOR AYALA: Can I ask you a question?

14 You indicated that you're opposed to the confirmation  
15 because he supports vouchers? Is that what you said?

16 MS. MICHAELS: Yes, and also the privatization.

17 SENATOR AYALA: He's indicated that he didn't do  
18 that, and he promised he wouldn't come out and fight for those  
19 kinds of projects any more.

20 MS. MICHAELS: I think his comments and his testimony  
21 today do show that he supports privatization of the public  
22 schools, including the Whittle, Channel One, and that sort of  
23 thing.

24 MR. PRATT: Thank you, Mr. Chairman and Members of  
25 the Committee.

26 I'm Rick Pratt with the California School Employees  
27 Association.

28 There's actually a lot to comment on today, but I

1 have just a few points that I'd like to address. The first  
2 couple really come under the framework of correcting some, I  
3 think, factual errors that were made.

4 On the one hand, it was stated that schools don't  
5 have any accounting -- standardized accounting procedure. And  
6 that if a private citizen wanted to go and compare how one  
7 school budgets with another school budget, they wouldn't be able  
8 to do so because there was no standard way of accounting for  
9 school expenditures.

10 In fact, that's not true. The Department of  
11 Education does have a standard accounting manual which schools  
12 are required to follow. School districts are annually audited  
13 by an outside independent auditor each year. Standard budget  
14 and accounting information is sent to the Department of  
15 Education, which then goes on to the State Controller's Office,  
16 and the Controller issues a report each year on financial  
17 transactions of school districts. And if anybody wants to see  
18 how much schools are spending on teachers' salaries, or  
19 instructional materials, or deferred maintenance, or any of  
20 these other areas and make those comparisons from district to  
21 district, they can do that. It's public information, and all  
22 the citizens have access to that.

23 With respect to assessment, the statement was made  
24 that if you want to know how well students are doing, you just  
25 can't find out because there really is not assessment, any  
26 meaningful assessment, taking place in California schools.

27 I am a parent of two high school students. And about  
28 two weeks ago, I got a letter from my school where my kids



1 attend, giving them -- giving me their standardized test scores.  
2 And these were nationally norm standardized tests that were  
3 mailed to my home address. I didn't ask for them; they were  
4 automatically mailed when the results were in. My school is a  
5 public school, and it's really not unique in that sense. Most  
6 public schools do have that kind of a testing program, and  
7 parents are informed of the results.

8 It is true, however, that we no longer have an  
9 assessment program which specifically links the assessment to  
10 California frameworks and curriculum standards, and we used to,  
11 but that has been sort of in abeyance lately because Governor  
12 Wilson vetoed the legislation for it, and he took the funding  
13 for it out of the budget. So, we used to have that kind of a  
14 program, but at the current time we do not.

15 I'd like to address the point that Mr. Hume made  
16 regarding the job applicants for his company. He stated, I  
17 believe, it was 50 percent of the entry level job applicants for  
18 his company cannot read at the seventh grade level. And I think  
19 that's a problem that we're all aware of, and we're concerned  
20 with, and nobody can hear of that kind of a statistic and not be  
21 concerned.

22 But we have to bear in mind that the high school  
23 students who are applying for entry level jobs are not a sample,  
24 or not an adequate sample, of the high school graduate  
25 population. For the most part, the good readers, the good  
26 mathematicians are not applying for the entry level jobs.  
27 They're going on to community colleges, CSU, UC, other job  
28 training programs.

1           And in fact, these students over the past ten years  
2 have been served very well by California schools. The CPEC  
3 report shows that not only the largest number, but the largest  
4 percentage of high school graduates in California history  
5 qualified for admission for CSU and UC, and this is even after  
6 CSU and UC increased their admissions requirements.

7           And so, while we do have problems, I think that we  
8 also have some success stories. And I bring that up because I  
9 think that we need to have some balance when we look at public  
10 education, and we look at the needs and ways of improving public  
11 education.

12           While it's true we have problems, we also have some  
13 strengths. And I didn't hear anything in Mr. Hume's testimony  
14 where he acknowledged those strengths, and I think that a Board  
15 member ought to have that balance when they look at public  
16 education in California.

17           On the issue of pay for performance, or providing for  
18 some kind of incentive, it's not clear. I mean, it doesn't work  
19 in education the way it works in the private sector, where the  
20 lines of accountability are clear. If a student learns or fails  
21 to learn -- sometimes students fail to learn despite good  
22 teaching, and sometimes students will learn despite poor  
23 teaching.

24           And if a student doesn't learn, is it because of poor  
25 teaching or is it because of some other reason? It could be  
26 because they're hungry; it could be because they have some  
27 problem at home that's distracting them.

28           If you believe in The Bell Curve, it could be because

1 they're not genetically equipped to learn. And that is very  
2 distressing when you link that up with the whole pay for  
3 performance issue, because it doesn't take a Harvard MBA to  
4 figure out that if you believe that some students are  
5 genetically predisposed to higher achievement, and if you're  
6 going to get paid for achievement, then you -- we know where  
7 we're going to devote our resources, and we know who's going to  
8 get left by the wayside.

9 On the issue of privatization, Senator Ayala brought  
10 up the issue of the privatization, and EAI, which is Education  
11 Alternatives, Inc. And Mr. Hume suggested that we ought to be  
12 willing to try to that in California, and why not?

13 To your direct question, it is against the California  
14 Constitution for public education -- for public schools, or any  
15 part of public schools, to be turned over to private operations.  
16 That is in the California Constitution. I don't know about  
17 other states. They may have different kinds of provisions.

18 But to the question of why should we or should we not  
19 try something like EAI in California, we can only look to  
20 Baltimore. Early test results which were -- this is a case  
21 where some of the schools in the Baltimore public schools were  
22 given over to private management under EAI. And some of the  
23 early results indicated that the students in those schools were  
24 doing a little better than the students in the other Baltimore  
25 public schools.

26 But it turns out that those early results were issued  
27 by EAI and were incomplete. And several months later, when the  
28 complete scores came out, not only were they not doing better



1 than the kids in the public schools, but they were doing worse  
2 and that the gap was widening.

3 I don't think that's the kind of experiment that we  
4 want to try in California.

5 We understand that the commitment has been made by  
6 Mr. Hume not to support the voucher in California for as long as  
7 he serves on the Board. But this does relate to other forms of  
8 privatization, such as Educational Alternatives, Inc., because  
9 we believe that if you manage to do something like the  
10 privatization of school management on a big scale in California,  
11 then you accomplish the same objectives as the voucher, and the  
12 voucher then becomes moot.

13 So, we are just as troubled by that as we are to the  
14 voucher system, and we're not reassured by any commitment not to  
15 publicly support a voucher while he is on the Board.

16 We believe, in anticipation of Senator Lewis's  
17 question in terms of a litmus test, we believe that a Board  
18 member ought to have a fundamental commitment to keeping public  
19 education public. And that is a very important issue with us,  
20 and I sincerely doubt that we would endorse the appointment of  
21 anybody who does support the voucher system.

22 Thank you very much.

23 SENATOR LEWIS: Question.

24 Just following up on your last comment, midway  
25 through your comments, you were arguing for the need of balance.

26 MR. PRATT: Right.

27 SENATOR LEWIS: You used that terminology.

28 Is it asking too much that one member of the State

1 Board of Education be allowed to be confirmed who's not knee-  
2 jerk opposition to educational choice?

3 MR. PRATT: Well, we're not talking about educational  
4 choice; we're talking about the voucher, which is public money  
5 for private --

6 SENATOR LEWIS: Either/or.

7 MR. PRATT: Well, we've taken support on several  
8 choice measures that have been before the Legislature as long as  
9 it's within the public schools.

10 Where we draw the line is, we do not believe that we  
11 ought to provide public taxpayer dollars for private schools and  
12 private education.

13 SENATOR LEWIS: But in terms of balance, the answer  
14 to the question is, if anybody has the audacity to be at least  
15 open to the notion of a voucher approach to education, even if  
16 that person commits during the term of his office he wouldn't  
17 campaign in that direction, you still would be opposed to the  
18 confirmation?

19 MR. PRATT: Yes.

20 CHAIRMAN LOCKYER: Next, please.

21 MS. CASTRO: Good afternoon. I'm Michelle Castro on  
22 behalf of the Service Employees International Union.

23 We, too, are in opposition to the appointment of  
24 Mr. Hume predominantly for his positions on vouchers and for  
25 his support for the privatization of school services and  
26 management.

27 Thank you.

28 CHAIRMAN LOCKYER: Next, please.

1 MS. SINKLER-WRIGHT: Good afternoon. My name is  
2 Sherry Sinkler-Wright. I am a vice principal at Brett Harte  
3 Intermediate School in Hayward.

4 I came here to attend an ACSA conference, and I  
5 haven't been primed or anything, but in listening to this  
6 hearing, I've had some real concerns about the appointment of  
7 Mr. Hume.

8 I think that, as most of you have stated, I agree and  
9 I thank him for all of his contributions to education. He has  
10 some very good credentials.

11 However, I have some questions that I'd like raised.  
12 I believe that education should be holistic. I've worked in  
13 Oakland extensively and in Hayward, and there are a great deal  
14 of needs and things that need to happen in those areas with  
15 children that have different needs.

16 We've heard Mr. Hume speak strongly for core  
17 curriculum, but what about more pressing substantive issues like  
18 how can a student do core subjects if he or she is hungry? How  
19 can a student be assessed fairly if he or she has had a test  
20 administered inconsistently? How can a student be motivated to  
21 excel in core areas that don't highlight or recognize the  
22 contributions of leaders, scholars, and teachers of their  
23 cultural heritage, such as African-Americans, Hispanics, and  
24 Asian-Americans?

25 And I think that those issues are some of the things  
26 that have not come out that are very substantive and very  
27 important in dealing with public education.

28 I'm also concerned about the fact of the choice



1 initiative in terms of the responsibility that the federal  
2 government and the state has to educate all children and not be  
3 subjected to special criteria for private schools, et cetera.

4 I believe that public education should be  
5 representative of and represent all children, and I don't  
6 believe that what I've heard today entails a platform or a  
7 standard or proposes inclusivity, and I'm very concerned about  
8 those issues.

9 CHAIRMAN LOCKYER: Thank you.

10 Next, please.

11 MR. THRASHER: Good day. My name is James Thrasher.  
12 I'm a resource specialist at Modesto High School in Modesto.  
13 I'm currently a Board of Director for the National Education  
14 Association and liaison for the State Board of Education,  
15 representing the California Teachers Association.

16 As the liaison, I have been representing CTA for the  
17 State Board of Education since 1989. In that time, I have  
18 worked with four other liaisons to establish lines of  
19 communication to the State Board of Education on issues relevant  
20 to CTA and observed the Board proceedings.

21 Today I am here representing CTA in strong opposition  
22 to the confirmation of Mr. Jerry Hume to the State Board of  
23 Education.

24 The background information on Mr. Hume indicates that  
25 he is on record as being 100 percent in favor of vouchers, as  
26 evidenced in his speaking before the Heritage Foundation on  
27 February 23rd, 1989.

28 He has shown his support of the privatization of the

1 public schools not only in his speaking to the Heritage  
2 Foundation, but also in his inviting of Mr. Mark Silzer, Vice  
3 President for Public School Partnerships with the Edison  
4 Project, and Mr. David Bennett, President of Education  
5 Alternatives, Incorporated, to speak to the State Board about  
6 their privatization efforts so far in the public schools.

7 He distributed copies of selected portions of The  
8 Bell Curve, Intelligence and Class Structure in American Life to  
9 fellow Board members. He suggested that this publication  
10 presented ideas that, though controversial, would become part of  
11 the national debate in education, and as such were worthy of  
12 Board consideration.

13 All of you are familiar with The Bell Curve. It  
14 essentially argues that IQ is largely genetic, and that low IQ  
15 means you can't success [sic] in society. They say because  
16 African-Americans generally score 10 to 15 points lower on IQ  
17 tests, they are predisposed to genetic inferiority.

18 To me, this smacks of those discussions of Aryan  
19 superiority that dominated Germany prior to the emergence of the  
20 Final Solution of those Nazis.

21 Clearly, such activities on the part of Mr. Hume  
22 demonstrate a lack of sensitivity that appointees to such a  
23 position demand, especially in a state as diverse as California.

24 In conclusion, on behalf of the California Teachers  
25 Association, we wish to reiterate our strong opposition to the  
26 confirmation of Mr. Hume to such a prestigious position as the  
27 State Board of Education. Given the attitudes and beliefs  
28 displayed, Mr. Hume should not be entrusted to oversee public

1 education in California.

2 CHAIRMAN LOCKYER: Thank you.

3 Anyone else who wishes to comment?

4 Mr. Hume, you're invited to respond to anything  
5 you've heard if there are any points you'd wish to make.

6 I guess I would want to ask one other thing. The  
7 Bell Curve treatise ends with a critique of affirmative action.

8 Did you reach that conclusion yourself? What are  
9 your views about that current debate?

10 MR. HUME: I think The Bell Curve, as I read it,  
11 indicated that -- that affirmative action was being divisive in  
12 this society rather than cohesive, and that it hadn't really  
13 worked.

14 CHAIRMAN LOCKYER: Those are the thoughts you would  
15 share?

16 MR. HUME: So, I would say that where affirmative  
17 action worked, it's probably been beneficial. Where it's been  
18 harmful, I think it should be looked at.

19 CHAIRMAN LOCKYER: Hard to argue with that comment.

20 Another question?

21 SENATOR PETRIS: Yes.

22 I wasn't going to ask any questions because I didn't  
23 get a chance to absorb and digest a lot of the material. I  
24 haven't read the book, you know, The Bell Curve, but the critics  
25 seem to say that its ultimate conclusion is there's no point  
26 wasting education on these people that are described in the  
27 minority section because it doesn't do any good, and for the  
28 same reason affirmative action doesn't do any good. Give them



1 the opportunity, but they don't learn.

2 Which is very, very distasteful to me. I think that  
3 it's a good thing that the Speaker of the Assembly didn't know  
4 that, or that Senator Diane Watson didn't know that. While she  
5 was up here as a full-time Senator, she got a Ph.D. down at  
6 UCLA, which doesn't just hand them out. She worked very hard to  
7 obtain that advanced degree while, at the same time, fulfilling  
8 her duties up here as a Senator.

9 So, if these critics are right, that it has a very  
10 pessimistic conclusion and says it's hopeless because of their  
11 genetic make-up, I find that shocking.

12 Now, I'm not saying you agree with that, but, you  
13 know, if I had that report, I wouldn't circulate it. The stuff  
14 I circulate is usually what I agree with. I don't circulate  
15 things I disagree with.

16 MR. HUME: You know, it seemed to me I was doing the  
17 Board a service in exposing them to that. I mean, I don't look  
18 at that as being detrimental.

19 If something's on the New York Times Best Seller List  
20 and deals with the subject of intelligence, and it's being  
21 discussed all over the country, is the State Board not to be  
22 exposed to something like that? I mean, I think that's  
23 terrible.

24 I'm not saying that any premises in The Bell Curve,  
25 one way or the other. I just provided them with an abridged  
26 summary that I received. I sent away and had it. I didn't have  
27 to, but I provided them with an abridged summary, and it seemed  
28 to me that it's something that they should be conversant with.

1           Why shouldn't they be conversant with it? Why  
2 shouldn't they think about that?

3           I can't understand this line of questioning. It  
4 seems to me very closed minded.

5           SENATOR PETRIS: I agree, they should be conversant.

6           But any member of a state board should stay in touch  
7 with the literature, and I would think every one of them would  
8 know about this without your kind and generous assistance in  
9 distributing the material.

10          And I'm not saying you're advocating these things.  
11 You've said repeatedly that you didn't make any comment, pro or  
12 con, and I respect that.

13          But going back to my objective approach to life as a  
14 State Senator, usually I find myself -- and I'm not the only one  
15 -- when I want my colleagues to read something, it's usually  
16 because I'm very hot over this viewpoint, and I agree with it,  
17 and it's terrific.

18          So, I guess that's a very narrow context in which to  
19 make the analogy.

20          MR. HUME: Well, you really have to read The Bell  
21 Curve, which I did, from cover to cover to understand what it  
22 says.

23          And the distortions that have been bandied around in  
24 the press about what The Bell Curve says are incredible. Don't  
25 believe what you read in the press about The Bell Curve until  
26 you read it yourself. You'll come forward with a completely  
27 different point of view.

28          SENATOR PETRIS: Well, here's a direct quote from the

1 book:

2 "For many people, there's nothing  
3 they can learn that will repay the cost of  
4 the teaching."

5 I don't know who these many people are, but I assume it's the  
6 black people in our society.

7 Well, that's what the whole book is about. It's  
8 about their inferiority and the bell curve and the learning  
9 curve.

10 MR. HUME: Well, but actually, in The Bell Curve,  
11 there is one chapter that has to do with the difference among  
12 races. Everything else is on what are the impacts of  
13 intelligence; what happens to people at one end of the  
14 distribution curve; what happens to people at other ends of the  
15 distribution curve.

16 They start out the book by saying, you know, we are  
17 becoming a divided society, and they bemoan the fact that we're  
18 becoming a divided society. They say all these people are going  
19 to the top universities, where there used to be the case in the  
20 past that people would be distributed through society in terms  
21 of intelligence. It's not happening now. It says they're  
22 getting concentrated in the elite institutions, and that's going  
23 to have profound impacts.

24 Now, you know, you take a look at Berkeley. Berkeley  
25 didn't exist 100 years ago. People were scattered throughout  
26 the whole country. Now, people go to Berkeley; they marry; they  
27 intermarry. It's a different dynamic.

28 Now that has to be looked upon as something that has



1 happened to our society. What are the implications of it? I  
2 don't know, but to say it's not happening --

3 SENATOR PETRIS: I don't say that.

4 MR. HUME: But that's what The Bell Curve says, it is  
5 happening.

6 SENATOR PETRIS: I just wonder where these authors  
7 have been, because as one of the reviews points out, we've known  
8 this for many, many, many years. I knew this when I was in  
9 junior high school, and the teachers wondering which, if any, of  
10 the kids from my neighborhood would ever make to UC. I was the  
11 only one.

12 So, I've known about differences, and it wasn't  
13 because my parents were wealthy. They were driven by a desire  
14 for education for their children, and they pushed real hard.  
15 It's part of their culture and tradition. I was lucky to be a  
16 member of that family.

17 But it doesn't take a couple of scientists of this  
18 kind to point out to us that there's division.

19 I take issue with what you said about affirmative  
20 action. It reminds me of an explanation I read at one time on  
21 what divides us. If there's a social critic that points out  
22 certain facts of life, as they're doing in this book, they're  
23 immediately branded as trying to divide us.

24 It's like the guy who's crossing the river that I  
25 read about one time. And he comes upon this one fellow who's  
26 got the other fellow's head under water. He's trying to drown  
27 him. So, he tries to stop him. He says, "Hey, you can't do  
28 that. You know, that's terrible." And the guy says, "Get out

1 of here. You're just trying to divide us."

2 He was doing a pretty good job of dividing himself at  
3 the time, and I think the analogy is probably pretty good on  
4 some of our social issues.

5 Anyway, I appreciate your comments. You're a  
6 fascinating, obviously highly educated person. I'd like to talk  
7 to you for a long time. I'm sorry I didn't make it, you know,  
8 when you came to the office. I'd like to learn more about some  
9 of the approaches that you take. I think a lot of them would be  
10 very helpful to our state.

11 MR. HUME: Give me an opportunity.

12 CHAIRMAN LOCKYER: I guess with respect to Bell  
13 Curve, the comment I wish to make is, I think it captures the  
14 half-informed. It's a very persuasive, interesting argument,  
15 and unless you know how selectively they picked things out of  
16 the academic literature, it can be disarming. I think it was  
17 designed to support and give comfort to those who flirt with  
18 racist doctrines in our society.

19 There is a letter that Mr. Murray, who autographed  
20 and sent this book to you, sent to editors, in which he says  
21 that, that he thinks a lot of people who are afraid to speak out  
22 because they might be considered bigots will find comfort and  
23 support in the book.

24 Now, it doesn't take a lot of sales, frankly, to be  
25 on the New York Times non-fiction Best Seller List. Just  
26 libraries subscribing is almost enough to get you to that  
27 threshold.

28 But I guess my sense of what's going on with you, and

1 it may be more intuitive than anything, is that you're an  
2 enormously bright, creative, interesting person, and a bit of an  
3 intellectual loose cannon, but I appreciate your commitment to  
4 kids and commitment to making schools.

5 This is the Murray letter, by the way:

6 "There are a huge number well-  
7 meaning whites who fear that they are  
8 closet racists. This book tells them  
9 they're not. It's going to make them feel  
10 better about things they already think but  
11 did not know how to say."

12 Now, the academic critiques of the book suggest that  
13 it's dishonest scholarship, that it's selected information about  
14 IQ tests, and Africa, and other places, in ways that make it  
15 dishonest scholarship.

16 My own conclusion about the book is that the message  
17 they wanted to make was one which gives comfort to genetic  
18 theories and a critique of affirmative action. So, they started  
19 with a message.

20 It might have been Isaiah that sold his birthright  
21 for a mess of pottage. These fellows sold theirs for a pot of  
22 message.

23 MR. HUME: You know, what's interesting to me, and  
24 I'm delighted that we've had this discussion on The Bell Curve.  
25 You know, I think this is -- I mean, I hope that the State Board  
26 has this discussion on The Bell Curve.

27 Not to have a discussion like this is to leave  
28 unanswered some of the questions and feelings that people have,



1 not only around this table, but on the State Board.

2 Now, if I haven't done anything else but bring up  
3 that issue so it can be addressed, I've done a service to the  
4 State Board. And that's what I look upon myself as doing.

5 Now, I may be criticized for doing that, but that's  
6 the way I am. And if I'm nominated, I'll continue to do stuff  
7 like that.

8 CHAIRMAN LOCKYER: I do not criticize for  
9 intellectual curiosity, for wanting to disseminate a wide  
10 variety of opinion.

11 It does seem to be selective.

12 MR. HUME: What do you expect?

13 CHAIRMAN LOCKYER: And conservative.

14 I haven't seen you bringing Angela Davis before the  
15 Board, or other things that might be criticized in a different  
16 manner.

17 MR. HUME: But I'm probably the only person bringing  
18 people before the Board, and that's sort of sad. I mean, the  
19 Board ought to be exposed to as many different ideas.

20 I don't have contacts with all those people there.  
21 There are people that say, you know, well, you ought to listen  
22 to this point of view. Of course, we do have a lot of people  
23 who come and give testimony on the Board.

24 CHAIRMAN LOCKYER: I commit the same sin, or  
25 whatever, that Senator Petris pleads guilty to. I just  
26 distributed the lead story from Harper's Magazine, "Reactionary  
27 Chic", which essentially says the '90s rhetoric is a  
28 regurgitation of the '60s rhetoric of the left. I think it is,

1 frankly. I'll give you my article, and we'll keep sharing  
2 articles.

3 MR. HUME: All right, and I'll circulate it to the  
4 Board. How about that?

5 [Laughter.]

6 CHAIRMAN LOCKYER: That may or may not be a good  
7 idea.

8 Anyhow, thank you for your frankness and directness.

9 MR. HUME: I honestly tried to let you guys know me a  
10 little bit.

11 CHAIRMAN LOCKYER: Well, you've done that, and these  
12 are very, very difficult judgments for us. We have some  
13 responsibility under a system of checks and balances to do that.

14 I'm recommending to the Members today that we not go  
15 to a vote today. I think it would be wise for us all to take a  
16 brief time to just mull and think and interact some.

17 Obviously, we know we have to act before the end of  
18 the month, and we will. But I think it would be constructive to  
19 take a little time.

20 MR. HUME: Okay.

21 CHAIRMAN LOCKYER: Thank you, Mr. Hume.

22 The next is Mr. Markarian.

23 MR. MARKARIAN: Hello.

24 CHAIRMAN LOCKYER: Did you want to begin with any  
25 brief comment?

26 ASSEMBLYMAN POOCHIGIAN: I'd like, if I may, Mr.  
27 Chairman, to introduce Mr. Markarian, if I may.

28 CHAIRMAN LOCKYER: Sure.

1 ASSEMBLYMAN POOCHIGIAN: I'm Chuck Poochigian. I'm a  
2 Member of the Assembly.

3 I'm delighted to speak to you, come before you today,  
4 Mr. Chairman and Members.

5 I'm pleased to introduce Ron Markarian. I've known  
6 him for a very long time. I've come to know him in the Fresno  
7 community through his community service work at a whole number  
8 of levels, and I've marveled, frankly, over the years at the  
9 level to which he's been involved in community work at every  
10 level. Not only does he join a great many organizations, and  
11 you're well aware of that from the information before you, but  
12 also he's a very active participant. He's got a lot of energy  
13 and stamina, more than I, and he's a few years older than I am,  
14 and I'm impressed by that, by his dedication and hard work.

15 He was born in Fresno, attended local schools,  
16 attended Cal. State University, Fresno. I think at the time it  
17 was called Fresno State College, where he earned a Bachelor's  
18 Degree in Education and went on to George Washington University  
19 in our nation's capitol to get his Master's Degree in Public  
20 Administration.

21 He spent 30 years of his life in active service to  
22 our country as a member of the United States Air Force. He flew  
23 missions in Vietnam as a crew member. During the course of his  
24 service to his country, he served in numerous leadership roles.

25 After discharge from the United States Air Force,  
26 with the rank of Colonel, he became very, very involved in  
27 community life, both nonmilitary and military community life, in  
28 Central California, and frankly, throughout the state and the



1 country. Very active in the Chamber of Commerce, a number of  
2 veterans' organizations, a number of military organizations, and  
3 he's held leadership posts, including presidency, of a number of  
4 organizations and has been a national trustee of the Army  
5 Association of the United States, and has been very active in  
6 the American Legion as well.

7 He's also been very involved in fraternal  
8 organizations, such as the Masonic Order. And as I mentioned,  
9 you have -- we don't have enough time today to go through all of  
10 his numerous accomplishments and organizational affiliations.  
11 You have that before you.

12 Whenever I've need information about military or  
13 veterans' issues, I've turned to Ron Markarian. He is, as I've  
14 said, a very impressive man. I think that he has made and will  
15 continue to make a fine contribution to the causes associated  
16 with the Veterans Board and to the veterans of our state.

17 It's my pleasure to call him a friend, and I urge you  
18 very strongly to seriously consider his appointment and confirm  
19 him into this important office.

20 Thank you.

21 CHAIRMAN LOCKYER: Thank you, Assemblyman.

22 As an expert in appointments, your thoughts are  
23 weighty.

24 ASSEMBLYMAN POOCHIGIAN: I must add, Mr. Chairman,  
25 that I had little, if anything, to do with this appointment. I  
26 therefore appreciate you not holding that against him.

27 CHAIRMAN LOCKYER: I understand.

28 ASSEMBLYMAN POOCHIGIAN: Thank you.

1 CHAIRMAN LOCKYER: Good afternoon, sir.

2 MR. MARKARIAN: Good afternoon.

3 CHAIRMAN LOCKYER: Did you want to begin with any  
4 comment?

5 MR. MARKARIAN: I have a comment or two, if I may,  
6 sir. And I'll thank you for the opportunity to address you on a  
7 couple of issues.

8 Mr. Poochigian did a good job of summarizing my  
9 military career.

10 When I retired from active military service, of  
11 course, I returned to my native land, California and Fresno, and  
12 made it a point to get involved in community and veterans'  
13 affairs.

14 As he indicated, I've served in chapter, state,  
15 regional and national offices with the Legion, the national  
16 sojourners, the Air Force Association, Army Association, and  
17 State Guard Association. I'm currently the Commander of the all  
18 volunteer State Military Reserve, and the part-time California  
19 State Director for the Selective Service System.

20 I'm serving in my fifth and final, due to term  
21 limits, year as the West Coast Region President and National  
22 Trustee for the Association of the U.S. Army.

23 I belong to the Vietnam Veterans, Am Vets, VFW.

24 CHAIRMAN LOCKYER: They have term limits, too?

25 MR. MARKARIAN: Oh, yes, they do.

26 CHAIRMAN LOCKYER: The organization?

27 MR. MARKARIAN: Yes, they do.

28 CHAIRMAN LOCKYER: Okay.

1 MR. MARKARIAN: DAV, and several other military and  
2 veterans' organizations, and I'm also active in fraternal  
3 organizations, currently serving as a board member for the  
4 California Scottish Rite Foundation, which operates 13 childhood  
5 language disorders clinics throughout our state.

6 Mr. Chairman and Members of the Rules Committee, I  
7 think I have the background and experience to serve on the  
8 Veterans Board. I'm sensitive to veterans' issues, and I  
9 maintain close personal contact with veterans' organizations,  
10 and participate in their activities.

11 I seek your support of my confirmation, and it would  
12 be my pleasure at this time to answer any specific questions  
13 that you might have.

14 CHAIRMAN LOCKYER: Senator Ayala.

15 SENATOR AYALA: The Department of Health Services is  
16 now running the Veterans Home?

17 MR. MARKARIAN: The Veterans Home is operated by the  
18 California Department of Veterans Affairs.

19 SENATOR AYALA: Is the Department of Health Services  
20 equipped to run the Veterans Home? I don't know why the  
21 question was asked because --

22 MR. MARKARIAN: I'm not sure why that was asked,  
23 either.

24 I know health care services are provided at the  
25 Veterans Home, but I'm not sure that's the responsibility of the  
26 Department of Health Services.

27 SENATOR AYALA: I guess that question is, why do we  
28 need a Department of Veterans Affairs, and then question is, is



1 the Department of Health Services equipped to run the Veterans  
2 Homes?

3 I don't understand that, but that was the question  
4 that was supposed to be asked of you. I don't understand that  
5 question.

6 Do veterans run that Veterans Home and building  
7 another one in Barstow?

8 MR. MARKARIAN: Yes, sir.

9 SENATOR AYALA: You only have two in California?

10 MR. MARKARIAN: There is a second home in the process  
11 of construction. It's about 75 percent complete in Barstow.  
12 There's another projected for Chula Vista, a third at Lancaster,  
13 and a fourth site to be determined.

14 Of course, that was in response to the veterans' home  
15 in Southern California.

16 SENATOR AYALA: Is there one in San Diego?

17 MR. MARKARIAN: Chula Vista.

18 SENATOR AYALA: There's one in Chula Vista.

19 MR. MARKARIAN: Yes, sir.

20 Now, those are selected sites, those homes that have  
21 not started any construction.

22 SENATOR AYALA: They've been selected, but there's  
23 none constructed?

24 MR. MARKARIAN: That's correct.

25 The only Southern California veterans' facility that  
26 is in the process of construction is that one in Barstow.

27 SENATOR AYALA: Thank you very much.

28 MR. MARKARIAN: Yes, sir.

1 CHAIRMAN LOCKYER: Other questions? Senator Petris.

2 SENATOR PETRIS: I have questions.

3 Again, I didn't get a chance to read all this stuff,  
4 but I think some questions need to be asked because there's some  
5 considerable criticism that I think you should be given an  
6 opportunity to answer.

7 Number one, it's alleged that under your command, the  
8 State Military Reserve considers itself out of the loop of the  
9 chain of command, and acting as kind of a loose cannon during  
10 state emergencies. Therefore, the Military Reserve doesn't have  
11 a good reputation with either the Office of Emergency Services  
12 or the National Guard.

13 The allegation seems to be that your department just  
14 takes off on its own, without going through the Military  
15 Department of the state or the other two groups just named.

16 MR. MARKARIAN: May I respond to that?

17 SENATOR PETRIS: Let me just add to it a little more  
18 specific item.

19 During the L.A. riots following the Rodney King  
20 verdict, and during the Oakland Fire, members of the Reserve  
21 mobilized themselves with your support. There was no request  
22 either from the Office of Emergency Services nor order from the  
23 National Guard.

24 In your answer, would you cover that, too?

25 MR. MARKARIAN: Yes, sir.

26 I'd say in terms of my relationship as the Commander  
27 of the State Reserve and the State Reserve to the National  
28 Guard, it is very definitely part of the Military Department.

1 And I, as the Commander, have a very close and continuing  
2 personal relationship with the Adjutant General, who is the  
3 Commanding General of the National Guard. I consult with him on  
4 almost a weekly basis.

5 We're in the process of moving our headquarters from  
6 a remote location at Mather Air Force Base to the National Guard  
7 Headquarters. And when that is accomplished --

8 SENATOR PETRIS: Is that here in Sacramento?

9 MR. MARKARIAN: In Sacramento, yes, sir.

10 That will ensure even closer coordination between our  
11 two organizations.

12 SENATOR PETRIS: So, is this inaccurate?

13 MR. MARKARIAN: In my view, I think it is, yes, sir.

14 I think there are a number of critics of the State  
15 Military Reserve who have made some accusations that I'm not  
16 sure can be fully substantiated.

17 SENATOR PETRIS: So, your contention is that during  
18 those two particular emergencies, you were in close coordination  
19 with --

20 MR. MARKARIAN: In the instance of the Los Angeles  
21 riots, we had a representative in the National Guard Emergency  
22 Operation Center who coordinated the activation of State  
23 Military Reservists in support of the National Guard and other  
24 local jurisdictions, and those were all approved admissions.

25 SENATOR PETRIS: Of course, maybe it's the other way  
26 around. As I recall, the National Guard was criticized severely  
27 for showing up kind of late in the L.A. riot situation, and  
28 maybe that spilled over on your group.



1 MR. MARKARIAN: I don't know. I don't think I could  
2 comment on that, sir.

3 SENATOR PETRIS: Tell me what is the State Military  
4 Reserve? Who belongs to it?

5 MR. MARKARIAN: The State Military Reserve is part of  
6 the militia of the State of California, which consists of three  
7 elements: the Army and the Air National Guard, the State  
8 Military Reserve, and a Naval Militia, which is provided for in  
9 the law but is not operative at the present time.

10 SENATOR PETRIS: How many people are in the Military  
11 Reserve?

12 MR. MARKARIAN: There's about 700-plus members. It's  
13 comprised predominately of veterans of prior military service.  
14 I'm a retiree.

15 SENATOR PETRIS: Are they in some kind of a military  
16 unit?

17 MR. MARKARIAN: Yes, sir. We are organized --

18 SENATOR PETRIS: A company or a brigade headquarters?

19 MR. MARKARIAN: We're organized into two geographical  
20 area commands, the Northern and Southern Command. And then, at  
21 brigade level, which is the next echelon below that, which is  
22 co-located with the Office of Emergency Service mutual aid  
23 regions throughout the state. That's who we set up the  
24 geographical boundaries for the State Reserve. And then  
25 further, at the community level our battalions exist.

26 We have supporting the State Military Reserve Unit  
27 that I described a medical brigade located in Sacramento, with  
28 Northern and Southern California elements.

1           And then we maintain the California Citizen Soldier  
2 Museum in Old Sacramento, which you're probably familiar with.

3           SENATOR PETRIS: What kind of a budget do you have?

4           MR. MARKARIAN: Right now we have none.

5           SENATOR PETRIS: Did you ever have one?

6           MR. MARKARIAN: We did have a budget several years  
7 back --

8           SENATOR PETRIS: How much?

9           MR. MARKARIAN: -- that amounted at the maximum of  
10 about \$300,000.

11          SENATOR PETRIS: That's why you're supporting the  
12 bill to get that \$300,000?

13          MR. MARKARIAN: I'd like to see that come back.

14          SENATOR PETRIS: Apparently, you're in conflict with  
15 the Military Department on that. They don't support that bill;  
16 is that right?

17          MR. MARKARIAN: Well, I don't --

18          SENATOR PETRIS: They don't say whether it's right or  
19 wrong. I just want to know what's happening.

20          MR. MARKARIAN: We discussed the bill initially, and  
21 I think the Adjutant General expressed to me his support of us  
22 receiving that funding, but of course, he didn't want that to  
23 come out of his budget because he was already under some very  
24 severe fiscal constraints. And I can appreciate that view.

25          SENATOR PETRIS: Well, we have that problem all the  
26 time. We each guard our own bailiwick very zealously, and  
27 especially in times of recession --

28          MR. MARKARIAN: Yes, sir.



1           SENATOR PETRIS:  -- when we're all scrambling for the  
2 hard-to-get dollar.

3           But at any rate, are you negotiating now on that to  
4 try to reach some agreement?

5           MR. MARKARIAN:  Yes, sir.  Unfortunately, he's going  
6 to be out of town this week and next week, but when he returns  
7 from Washington, we'll get on it and try to resolve any issues.

8           SENATOR PETRIS:  Another part is on questions being  
9 raised about promotion of officers and the retiring of  
10 personnel.  One point is that a number of high ranking officers  
11 in the Military Reserve, according to the Military Department,  
12 there are 50 Colonels for those 700 people that you told us,  
13 while in the Army National Guard there are only 42 Colonels  
14 covering a 20,000 person force.

15           That seems to be out of balance.

16           MR. MARKARIAN:  Well, I can't speak to the accuracy  
17 of the 42 Colonels, but I would tell you this, that many of the  
18 people that come into the State Military Reserve are senior  
19 officers.  I was a retired Colonel.

20           Obviously, it would be inappropriate, I think, to  
21 come in at a lesser rank; although some people have done that.

22           SENATOR PETRIS:  Are there any privates in the  
23 Military Reserve?

24           MR. MARKARIAN:  We have a couple.  Bear in mind --

25           SENATOR PETRIS:  They serve the coffee at your  
26 meetings?

27                               [Laughter.]

28           MR. MARKARIAN:  No, sir.

1 Bear in mind that this is a cadre organization, and a  
2 cadre by its very nature consists of the top leadership upon  
3 which you would expand down to the ranks in the vent that you  
4 fleshed out the organization.

5 SENATOR PETRIS: When I was in the Army, I thought it  
6 worked the other way. The first person in the cadre I ran into  
7 was in the Reception Center, who jumped on all of us civilians  
8 who were just coming in. We loved him so much we called him  
9 Corporal Buckcan. And he was the leading cadre representative,  
10 and I remember him with affection all these years.

11 MR. MARKARIAN: Senator Petris, may I comment also,  
12 you made -- you talked about the Colonels.

13 SENATOR PETRIS: Yes.

14 MR. MARKARIAN: I might point out that a good number  
15 of those Colonels are in the Medical Corps that had been prior  
16 service Colonels in the active component.

17 SENATOR PETRIS: Is that a part of the Emergency  
18 Service?

19 MR. MARKARIAN: The medical organization not only has  
20 the capability to support medical services, but we do other  
21 things as well. For example, we help conduct the physical  
22 examinations of Guardsmen, because they are short of medical  
23 personnel. We have a Medical Brigade currently in the Guard  
24 which is scheduled to phase out. Once that brigade is gone,  
25 that shortage will be even more severe.

26 In addition, we have participated in several veteran  
27 stand downs, wherein we work with the veterans' organizations on  
28 assisting the homeless veterans. And as you know, they spend a

1 period of time where they give them medical exams; they counsel  
2 them and try to get them back into the mainstream.

3 SENATOR PETRIS: What do you consider to be your most  
4 important mission? Not you personally, but the Military  
5 Reserve? Is it emergencies, or what?

6 MR. MARKARIAN: Well, I think certainly we have a big  
7 contribution that we can make to the emergency readiness of this  
8 state in terms of disaster planning, and preparedness, and  
9 exercising, and responding on a prearranged basis, because the  
10 local jurisdictions, as you well know, are very severely  
11 constrained on both manpower and financial resources to do -- to  
12 prepare in those areas. And I think people with a background  
13 and experience in military planning and operations can make a  
14 very useful and meaningful contribution in that regard.

15 SENATOR PETRIS: Has that resource been used in the  
16 numerous disasters we've had in California in the last couple of  
17 years?

18 MR. MARKARIAN: It has been used on occasion, not to  
19 the extent that it offers a potential to be used in. I think  
20 that needs to be done.

21 SENATOR PETRIS: How are you going to go about that?  
22 Do you have to appeal to the Military Department?

23 MR. MARKARIAN: Well, we're -- we're in discussion on  
24 that subject now. I think we're coming to an accommodation on  
25 those relative roles and missions.

26 Obviously, the National Guard is not in the business  
27 of doing local emergency planning. We're a community-based  
28 organization that is quite capable of doing that.



1           SENATOR PETRIS: Your department's ability to do that  
2 depends on how much of the \$300,000 you're able to get in order  
3 to operate?

4           MR. MARKARIAN: I think that would certainly enhance  
5 our capability to do that, but it wouldn't be an absolute  
6 requirement.

7           SENATOR PETRIS: You mentioned the veterans. I think  
8 you said something about some of the veterans' groups. Did you  
9 mention the American Legion?

10          MR. MARKARIAN: I belong to the American Legion, and  
11 the Am Vets, and DAV, Vietnam Vets.

12          SENATOR PETRIS: You named a bunch of them.

13          Are your relations with them pretty good?

14          MR. MARKARIAN: Well, I think so. I'm probably more  
15 active in the Vietnam Veterans and the American Legion, more  
16 specifically American Legion, than others.

17          SENATOR PETRIS: You just got on the Board a few  
18 months ago?

19          MR. MARKARIAN: Last March. I'm coming up on one  
20 year.

21          SENATOR PETRIS: You weren't serving in the Board  
22 itself before that?

23          MR. MARKARIAN: No, sir.

24          SENATOR PETRIS: We had a big problem with the Board  
25 in connection with the Cal. Vet insurance on their homes, the  
26 Cal. Vet Loan Program.

27          During the big fire in Oakland, I have first-hand  
28 knowledge because I was one of the fire victims, and other

1 victims, there are about seven or eight veterans who lost their  
2 homes in that fire.

3 I was shocked and appalled -- and I'm just saying  
4 this to alert you to some future -- hopefully, we won't have any  
5 again.

6 But, you know, traditionally, the viewpoint among  
7 some of us is, if you have an automobile accident or a fire in  
8 your home, the typical posture of the insurance company, the  
9 private company that covers your home, is they really resist  
10 your claim as much as they can and limit it, and try to find  
11 holes in it, and so forth. So, they have a bad reputation as  
12 far as serving the policy holder goes, individual company by  
13 individual company.

14 But in that Oakland Fire, it was just the opposite.  
15 They not only immediately went to work to help the victims, but  
16 most of them paid out more than they were legally obligated to  
17 pay. A lot of them paid, for example, full replacement value,  
18 when it wasn't even in the policy, or the definition was subject  
19 to dispute. They resolved those in most cases in favor of the  
20 homeowner, except for the VA, which I thought should always set  
21 the example of how to treat the policy holder.

22 The VA veterans just didn't get any kind of a break,  
23 any kind of good consideration from the Department, until  
24 legislation was enacted to compel them to do this, and this, and  
25 that.

26 Finally, the current Director, who was a retired  
27 Admiral, current at that time, issued on his own a regulation  
28 requiring the State Department to provide full replacement value



1 to these seven or eight veterans. It was a drop in the bucket  
2 against the very large amount that they had in reserve.

3 I hope, if there's ever another disaster of this  
4 kind, that under your leadership, you're going to have your  
5 people get to it right away. It was very sad to see this  
6 happen.

7 I had a lot of meetings with those veterans. They  
8 lived in my city, where I live, and we heard a lot of very sad  
9 stories. Well, a lot meaning seven or eight, because that's all  
10 there were.

11 But every single claimant had the same experience,  
12 which suggests to me a lack of sensitivity on the part of the  
13 staff, who weren't trained as insurance people anyway. They  
14 were administrators and clerks, and they just didn't seem to  
15 know how to handle it.

16 So, I would recommend to you that you review whatever  
17 the standing policy is now in preparation for something that,  
18 hopefully, you'll never have to use.

19 Thank you.

20 MR. MARKARIAN: Sir, may I comment?

21 SENATOR PETRIS: Yes.

22 MR. MARKARIAN: I think the Department is blessed  
23 with a very dedicated and aggressive Director, soon to be  
24 Secretary, who puts the veterans first, and does everything he  
25 can to make that occur. And he's implemented some tremendously  
26 innovative and effective policies that is making that a reality.

27 SENATOR PETRIS: What's his name?

28 MR. MARKARIAN: Colonel Jay Vargas.

1           SENATOR PETRIS: Yes, I've met with him early on.  
2 I'm aware of that.

3           Thank you, Mr. Chairman.

4           CHAIRMAN LOCKYER: Other questions? What's the  
5 pleasure of the Committee?

6           SENATOR BEVERLY: Move we recommend confirmation.

7           CHAIRMAN LOCKYER: Motion by Senator Beverly. Call  
8 the roll, please. There is no opposition that I'm aware of.

9           SECRETARY WEBB: Senator Ayala.

10          SENATOR AYALA: Aye.

11          SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator  
12 Petris.

13          SENATOR PETRIS: Aye.

14          SECRETARY WEBB: Petris Aye. Senator Beverly.

15          SENATOR BEVERLY: Aye.

16          SECRETARY WEBB: Beverly Aye. Senator Lockyer.

17          CHAIRMAN LOCKYER: Aye.

18          SECRETARY WEBB: Lockyer Aye. Four to zero.

19          SENATOR BEVERLY: Can we leave the roll open?

20          CHAIRMAN LOCKYER: Yes, we'll hold the roll open for  
21 Senator Lewis.

22          MR. MARKARIAN: Thank you very much.

23                 [Thereupon the final vote for  
24 confirmation was 5-0, as Senator  
25 Lewis's aye vote was added  
26 pursuant to Senate Rule 28.7]

27                 [Thereupon the Rules Committee  
28 acted upon legislative agenda

1 items.]

2 CHAIRMAN LOCKYER: Come on up, Mr. Thieriot. This is  
3 item number three, Richard Thieriot.

4 Sorry you had such a long wait earlier.

5 MR. THIERIOT: No, no.

6 CHAIRMAN LOCKYER: Hopefully, it's interesting.

7 MR. THIERIOT: Very educational, fascinating.

8 CHAIRMAN LOCKYER: Did you want to begin with any  
9 kind of opening comment?

10 MR. THIERIOT: I didn't have any statement prepared.  
11 I could go through some of the things I've been involved  
12 with.

13 CHAIRMAN LOCKYER: Would you just stay there and let  
14 me interrupt for just a moment.

15 [Thereupon the Rules Committee  
16 acted upon legislative agenda  
17 items.]

18 CHAIRMAN LOCKYER: Sorry, Mr. Thieriot.

19 We can begin by asking for comment and letting that  
20 occur first while you consider any statements you might want to  
21 make, if you wish, if there are supporters or opponents present.  
22 We could start that way, and let them comment.

23 MR. THIERIOT: If comments are helpful, I can make  
24 some quickly.

25 CHAIRMAN LOCKYER: All right.

26 MR. THIERIOT: The principle areas in which I've been  
27 involved in wildlife and environmental concerns and  
28 environmental protection are that I was the founder of a

1 15-20,000 acre wildlife complex up near Chico, California. It  
2 was on a piece of ground that had been an old, old family ranch,  
3 going back over a century.

4 We did a project where we bought out the other family  
5 members, and in conjunction with both federal and state agencies  
6 and some private environmental agencies, created this very large  
7 wildlife complex.

8 It was sort of interesting in that it was a little  
9 bit unprecedented and that it was -- we were able to put  
10 together all these different agencies, with private landowners,  
11 and as I say, federal, and state, and public organizations. And  
12 we'd hoped that it would be something of a model for other  
13 projects of its kind.

14 I was also Chairman of a thing called Farm and  
15 Wetlands, which was an organization, again, to set aside  
16 wildland and wetlands many years ago when it was sort of a novel  
17 thing to do it. We were hoping to do it on a private property  
18 basis. That if we could do it on a profit making basis, then  
19 things like this would start out and sustain themselves.

20 And we thought we were pretty clever. It was early  
21 '80s. We had caught that cycle where ag. values were dropping,  
22 and we thought that if we could buy ag. land fairly cheaply,  
23 convert it, return it to nature, improve it in terms of the  
24 wildlife and waterfowl usage, we could then resell it as duck  
25 clubs or places people would want to have in the country.

26 And concept, I think, or at least I hope it was  
27 pretty good. But we were too early, because we only got the  
28 beginning of the cycle. It kept falling after -- after we



1 purchased the land. So, it became something where we just  
2 couldn't make a go of it.

3 But the Nature Conservancy came in. They had funded  
4 us at the beginning, and they picked it up, and they have turned  
5 it now into what has become known as the Cosumnes Wetlands.  
6 It's been very successful, or at least pretty successful.

7 Beyond those specific projects that I've been  
8 involved with, I'm a trustee of the California Academy of  
9 Sciences. I'm on the advisory board of the local Audubon  
10 organization and of the national Fish and Wildlife Foundation, a  
11 member and supporter of Nature Conservancy, California  
12 Waterfowl, Sierra Club, Legal Defense Fund, Rain Forest Action  
13 Network, Resource Renewal Institute, and some others.

14 That's just a quick summary.

15 CHAIRMAN LOCKYER: Thank you, sir.

16 Senator Kopp, did you want to introduce --

17 SENATOR KOPP: Mr. Chairman, I apologize for  
18 abandoning Mr. Thieriot --

19 CHAIRMAN LOCKYER: He hasn't been abandoned.

20 SENATOR KOPP: -- by not being present.

21 CHAIRMAN LOCKYER: We've adopted him in your absence.  
22 We're going to leave you Hume and keep Thieriot.

23 [Laughter.]

24 SENATOR KOPP: I remember, Mr. Chairman, for the  
25 record, about two years ago, and Senator Ayala will remember,  
26 with one of his characteristically controversial bills about  
27 building a dam.

28 CHAIRMAN LOCKYER: Oh, yes.



1           SENATOR KOPP: And it was Mr. Thieriot who suggested  
2 it would be imprudent to do so unless water was guaranteed for  
3 wildlife and waterfowl, which I think is emblematic of his true  
4 commitment.

5           For the record, I've known Mr. Thieriot approximately  
6 20 years, and I want the record to reflect that his reputation  
7 in our community is of the highest order in terms of his  
8 honesty, and in terms of his conduct.

9           No matter what you may hear to the contrary, he is a  
10 fastidious person and a scrupulous person. And I would have no  
11 question whatsoever, Mr. Chairman and Members of the Committee,  
12 about his fidelity to law, to regulation, and to the American  
13 process of government.

14           And I can assure you that he will be respectful to  
15 his fellow Californians of all stripe and of all status as a  
16 continuing member of the Fish and Game Commission. He is that  
17 kind of a person, and I urge you to recommend his confirmation  
18 to the State Senate.

19           Thank you.

20           CHAIRMAN LOCKYER: Thank you, Senator.

21           Since we have another Senator present, would you wish  
22 to comment now, Senator Hayden?

23           SENATOR HAYDEN: Sure.

24           Thank you, Mr. Chairman.

25           Mr. Thieriot and I were just engaged in a civil  
26 conversation in my office, trying to get to the bottom of some  
27 of these issues when the appointment came up. So, perhaps we  
28 can clarify the issues here.

1 I'm here more or less as a neutral with great  
2 concerns in two areas. Primarily concern is, Members of the  
3 Committee, that the administration seems to be turning the Fish  
4 and Game Department into more of a permitting agency for  
5 landowners and others, developers, who are opposed to the  
6 Endangered Species Act, which it is supposed to be an agency  
7 that protects wildlife, and fish and wildlife across the state.

8 For example, the top Warden of the Year, Mr. Bishop  
9 from Butte County, whom I just spoke to, testified under oath at  
10 a hearing of the Natural Resources Committee just two weeks ago  
11 that political pressure on the administration was causing the  
12 Department not to enforce the law. This was repeated in an  
13 editorial in the San Francisco Chronicle on Sunday.

14 Immediately in the wake of the hearing, for whatever  
15 reason, the head of the Department, Boyd Gibbons, was summarily  
16 removed without any clear explanation.

17 The issues in that Department require tremendous  
18 oversight and a recommitment to the enforcement of our fish and  
19 wildlife laws.

20 This occasion might be an opportunity for you to  
21 question the fact that the administration has openly declared  
22 that it seeks to get around the Legislature, around the Senate,  
23 and accomplish by administrative order what it fears it might  
24 not be able to accomplish legislatively. There are drafts upon  
25 drafts of documents I can share with you that show that the  
26 administration's attorney, Mr. Manson, intends to seek to weaken  
27 the environmental laws in general, and the Endangered Species  
28 Act by getting around them.

1 CHAIRMAN LOCKYER: Is his first name Charles?

2 SENATOR HAYDEN: No.

3 With respect to Mr. Thieriot, the same Mr. Bishop,  
4 the same warden who's Warden of the Year, filed in October,  
5 1993, 193 citations -- 193 counts of violations of wildlife  
6 codes having to do with the improper possession of deer, duck,  
7 and other species in a freezer on the ranch that is owned by  
8 Mr. Thieriot's corporation, the Parrot Ranch Corporation.

9 I don't think the framework of the issue is whether  
10 there were those 193 violations of the law. To me, the  
11 framework is, is Fish and Game going to enforce the law or not.

12 However, with respect to the 193 violations, what we  
13 were just getting into was the statement by Mr. Thieriot that  
14 basically, this matter is over. As he says, "I assume that the  
15 Butte County D.A. must have substantially agreed with us,  
16 because we never heard from him again and charges were never  
17 filed."

18 My understanding, and I want Stephanie Rubin, who is  
19 my legal counsel on this issue, has been in touch with Mr.  
20 MacKenzie, who's the D.A. in Butte County, to corroborate this  
21 statement, that these charges are alive, that they're in  
22 settlement discussions with the corporation, and that Mr.  
23 MacKenzie says, "We're not going after them criminally," and he  
24 said he was concerned that if his name came into this matter for  
25 not going after them criminally, environmentalists would be  
26 concerned.

27 We're past the time that they can be gone after  
28 criminally, anyway.



1           Then I talked to Mr. Bishop just a few moments ago.  
2 He says they have a good relationship with the D.A. in that  
3 county. And he, too, was told by Mr. MacKenzie that they were  
4 going to go after the principals at the ranch and have them make  
5 a civil restitution instead of a criminal one, so that the  
6 criminal charges would be dropped, because often times, people  
7 want to pay a fine rather than have a criminal record.

8           So, I can't tell whether this is important enough to  
9 put this matter over for an hour, but there's a total disparity  
10 between the statement of Mr. Thieriot -- that this is dissolved  
11 and the matter was never moved forward, charges were never  
12 filed, he must have substantially agreed with us -- versus the  
13 statement of the D.A. in question, who says he's in the midst of  
14 civil settlement, finding them guilty of the 193 violations, and  
15 having them do restitution.

16           So, there's a large question of enforcement, but  
17 there is also a dangling question here about the disposition of  
18 this particular case.

19           CHAIRMAN LOCKYER: I don't know what we can learn, if  
20 there were a way to learn.

21           Can you comment on all --

22           SENATOR HAYDEN: We were just in the middle --

23           CHAIRMAN LOCKYER: -- the 193 violations; what you  
24 know about the D.A.'s current activities or plans?

25           MR. THIERIOT: I think, first of all, Senator, I'm  
26 not sure it was 193 violations. I don't know if that's the way  
27 to say it.

28           I had written up a description of what we believe

1 happened and handed it out. And I think Senator Hayden has one,  
2 too.

3 SENATOR HAYDEN: Right.

4 MR. THIERIOT: Specifically, relative to the point  
5 Senator Hayden raises, our attorney talked to this district  
6 attorney two or three times by phone. And after that, the  
7 district attorney never called us back. And that was nine or  
8 ten months ago now, and no charges were filed.

9 And I'm not a lawyer. I'm not sure what the law is,  
10 but my understanding was that if you don't file them within a  
11 year of the offense --

12 SENATOR HAYDEN: Criminal; if you don't file criminal  
13 charges.

14 MR. THIERIOT: -- that then it's -- it means the  
15 charges have been dropped.

16 CHAIRMAN LOCKYER: When did it happen?

17 SENATOR HAYDEN: October, '93. We're the one year.

18 CHAIRMAN LOCKYER: Okay, we're way past the year.

19 So the question, I guess, is whether there might be  
20 some civil matter contemplated.

21 Have they mentioned that at all?

22 MR. THIERIOT: That was part of the conversations.

23 CHAIRMAN LOCKYER: Months ago?

24 MR. THIERIOT: Yes.

25 SENATOR HAYDEN: If I might just introduce Stephanie  
26 Rubin, who's an attorney, who's been in touch with the Butte  
27 County D.A. I just want in her words what she --

28 CHAIRMAN LOCKYER: Ms. Rubin.



1 MS. RUBIN: I spoke to Rob MacKenzie, Butte County  
2 D.A. last Wednesday or Thursday. And what he explained to me  
3 was that criminal charges were not filed, but that they were in  
4 the midst of settlement discussion, the amount of which  
5 obviously he could not disclose. And he sent me this Fish and  
6 Game report for our review.

7 CHAIRMAN LOCKYER: Mr. Thieriot, do you know of any  
8 civil settlement discussions involving anyone in your  
9 corporation?

10 MR. THIERIOT: Yes. Our attorney had talked to them  
11 about a civil settlement because, when the wardens came and took  
12 the game, they listed as the offender the Parrot Ranch, and the  
13 Ranch manager, a fellow named Jim Burris. And he really had  
14 nothing to do with the game, and he was very concerned that it  
15 would be unfair look bad if his name got out as being associated  
16 with this.

17 And it was on that basis that we told our attorney to  
18 go ahead and do a settlement to get Mr. Burris's name -- to  
19 protect Mr. Burris, if it were possible.

20 But it wasn't to do with the charges, which, to the  
21 best of my knowledge, weren't -- I don't think any illegality  
22 was done. As far as we know, as far as we've been told, all  
23 those birds were properly tagged.

24 The issue has to do, I think, not with having taken  
25 game wrong, or shot it improperly, or having shot too many. It  
26 was with whether or not they were properly tagged, the birds,  
27 the duck and the pheasant and the quail, and stored properly.

28 When you store game, you have to have it properly

1 tagged. And I think that's what the charge ended up being, that  
2 we hadn't properly tagged them.

3 And I wasn't there, so I can't say I absolutely know  
4 for sure, but our Ranch manager was there, and he helped the  
5 wardens actually load the game into the warden's truck.

6 CHAIRMAN LOCKYER: Whose game was it?

7 MR. THIERIOT: It was four limits of quail had been  
8 shot by myself and three sons the prior season. Then there were  
9 about 20 limits of duck, which had been shot by three or four  
10 family members and their guests, again legally and within the  
11 limits and all that. And there were also geese and pheasant  
12 which had been shot by other family members.

13 And there, too, my understanding was that they had,  
14 in fact, all been properly tagged.

15 SENATOR HAYDEN: That's correct.

16 Mr. Bishop, the warden, also among the 193 counts,  
17 cited violations of Section 3081, which provides that only a  
18 legal limit may be possessed after the season, even if it is  
19 tagged, which means that there was a number of deer over the  
20 legal limit, in addition to the issue of whether they were  
21 tagged properly.

22 CHAIRMAN LOCKYER: You mean there wasn't hunting in  
23 excess of the limit, but freezing? They were only freezing  
24 them.

25 SENATOR HAYDEN: Only a legal limit may be possessed  
26 after the season, whether it's tagged properly or not.

27 CHAIRMAN LOCKYER: So, when the season ends, there  
28 were some animals --

1 MR. THIERIOT: During the season, you can possess two  
2 limits. During a season, you can hunt one limit on any given  
3 day, but you can have two in possession on any given day,  
4 including the limit you shot the day before, theoretically.

5 After -- ten days after the end of the season, the  
6 rules change. And then in possession, you can only have one  
7 limit. You can no longer have two.

8 So, I assume that's what is meant but I don't know.

9 CHAIRMAN LOCKYER: Were you aware --

10 MR. THIERIOT: But deer, but the reference to deer  
11 really, I think, had nothing to do with -- I know it had nothing  
12 to do with me. I don't think it had anything to do with any of  
13 the family. I think maybe some of the fellows on the Ranch had  
14 hunted deer. That's the way it works.

15 But again, I don't think there were deer over limit.  
16 I don't think -- that were taken over the limit. And I don't  
17 know about this possession.

18 SENATOR HAYDEN: Well, Mr. Chairman, I have some  
19 interest in this matter of the violations, but wanted to really  
20 raise the question about the Fish and Game philosophy, because  
21 I'm prepared to believe Senator Kopp in a minute, or Huey  
22 Johnson, or Judge Newsome, or others who are here that this  
23 gentleman cares about the environment.

24 I only linger on this because in the last day, we've  
25 got the statement from Mr. Thieriot that either his statement  
26 falls short of the full story, or the D.A. up there, because the  
27 D.A. says, hey, we're still in talks with these people; we're  
28 going to put civil penalties in; they're going to agree to that.



1 He said something, as I mentioned, about criminal penalties.

2 And then, on the other hand, this gentleman says he  
3 knows nothing of it, and he's been talking to his attorney.

4 So, I think we ought to at least settle whether the  
5 violations occurred. We've acknowledged that the violations of  
6 the law have occurred, and whether a civil settlement is  
7 pending. In which case, it's not -- certainly not dispositive,  
8 but it's fact to be taken into account for a member of the Fish  
9 and Game Commission.

10 I just don't know what the truth is now. I thought  
11 this would be an easier matter to settle, but either the D.A. is  
12 correct, or Mr. Thieriot is correct.

13 CHAIRMAN LOCKYER: I missed your comment. It sounded  
14 like you said you were aware of some discussions that were --

15 MR. THIERIOT: Yes.

16 CHAIRMAN LOCKYER: -- in mid progress.

17 MR. THIERIOT: They had come up, to my knowledge, in  
18 one or two telephone conversations.

19 CHAIRMAN LOCKYER: This is more recent?

20 SENATOR HAYDEN: Ten months ago.

21 CHAIRMAN LOCKYER: This is still back several months?

22 MR. THIERIOT: The latest of which was ten months  
23 ago, and we never heard back from them after that.

24 SENATOR HAYDEN: Was it possible that they could be  
25 talking to your attorneys last Wednesday?

26 MR. THIERIOT: No, not possible.

27 SENATOR HAYDEN: I give up.

28 MR. THIERIOT: I mean, I think it's a fair point to

1 raise, but obviously because --

2 CHAIRMAN LOCKYER: Did you have any knowledge of a  
3 violation with respect to the keeping of the game?

4 MR. THIERIOT: No, none at all. And as of now, I  
5 don't necessarily agree with the Senator. I'm not accepting  
6 that there was a violation.

7 CHAIRMAN LOCKYER: But you certainly had no -- well,  
8 it sounds like you had no intent to violate the law or  
9 regulation. Is that an accurate statement?

10 MR. THIERIOT: Absolutely.

11 CHAIRMAN LOCKYER: Maybe before we go to a vote on  
12 the Floor, we'll get additional information on that.

13 SENATOR HAYDEN: That might be the fairest way.

14 CHAIRMAN LOCKYER: Senator Ayala.

15 SENATOR AYALA: I was just going to indicate that the  
16 information given to us as of today indicates that no charges  
17 were filed against Mr. Thieriot, and that it's been over a year.

18 Is that true as I just indicated, that it's been over  
19 a year that the charge would have been charged, but they're  
20 never been charged, according to the information we have, never  
21 filed against the gentleman here.

22 MR. THIERIOT: It's been ten months since any  
23 conversation, and it's been a year and a half since --

24 SENATOR AYALA: But you're not aware of any charges  
25 they filed against you?

26 MR. THIERIOT: No.

27 SENATOR HAYDEN: But that information, obviously, is  
28 not accurate, Senator, because why would the D.A. this week say,



1 "We're finding them in violation and imposing a civil  
2 settlement"?

3 CHAIRMAN LOCKYER: I would suggest because somebody  
4 asked. That's my suggestion about why you got that comment.

5 We're going to about environmental philosophy.

6 SENATOR HAYDEN: I'm very concerned about  
7 nonenforcement, and I hope that Mr. Thieriot will assure us that  
8 he would be, if appointed, independent of the Governor, a  
9 believer in the enforcement of Fish and Game laws, and do  
10 something about the mess at the Department.

11 I mean, when the top Warden of the Year says that  
12 he's talked to all the other wardens, and he's willing to go on  
13 record, under oath, saying that we're being told not to enforce  
14 the law, and then the Director jumps up and say, "What do you  
15 mean by that? And then, a few days later, the Director is  
16 removed by the Governor, I don't know what's going on.

17 But I think that the pattern suggests that if the  
18 Senate doesn't do oversight of what's going on at Fish and Game,  
19 you're allowing potentially a usurpation of executive authority.  
20 And I'd say that whether it was a Democratic Governor or  
21 Republican Governor.

22 CHAIRMAN LOCKYER: It's clear to me that we have an  
23 executive officer who is very selective about obeying the law.  
24 I've seen it in numerous contexts, and it's, I think, a personal  
25 defect that probably disqualified the gentleman from the  
26 presidency.

27 SENATOR HAYDEN: I wouldn't go that far.

28 CHAIRMAN LOCKYER: Well, I would when it gets to be a

1 public issue, which it will.

2 And I've seen the pattern again and again and again,  
3 where this Governor is very selective about enforcing or  
4 ignoring laws that he doesn't agree with.

5 Now, let's find out if that has anything whatsoever  
6 to do with this gentleman,

7 SENATOR HAYDEN: It's just a question of whether this  
8 gentleman --

9 CHAIRMAN LOCKYER: Has the backbone --

10 SENATOR HAYDEN: -- having been appointed by the  
11 Governor, is willing to --

12 CHAIRMAN LOCKYER: Right.

13 SENATOR HAYDEN: -- express his independence.

14 CHAIRMAN LOCKYER: I'm tentatively convinced he is,  
15 but I'd like to hear him comment on these matters.

16 Have you heard sort of suggestion that there's  
17 perhaps undue political influences at work within the  
18 Department?

19 MR. THIERIOT: I'm not sure I've heard it within the  
20 Department. I mean --

21 CHAIRMAN LOCKYER: I'm not asking you to agree or  
22 disagree with any of the prior statements, simply what you've  
23 seen, if anything.

24 MR. THIERIOT: I've certainly criticisms from both  
25 sides of the spectrum on all the issues that have come up,  
26 including does the Governor's Office try to exert too much  
27 control over the Commission and the Department. I mean, you  
28 hear opinions on both sides of that.

1 CHAIRMAN LOCKYER: Have you felt not pushed?

2 MR. THIERIOT: It's not really an issue or problem  
3 for me.

4 By way of example, in seven Commission meetings that  
5 I've attended, the only two times endangered species legislation  
6 questions came up, both of my votes were more aggressive  
7 environmental ones.

8 CHAIRMAN LOCKYER: That was when you had a listing  
9 question?

10 MR. THIERIOT: Yes, there were two listing questions,  
11 one for a thing called a Southern Seap Salamander, and another  
12 for the infamous Gnat Catcher in Southern California. And in  
13 both those, I say I voted more proactively environmentally.

14 I think I understand Senator Hayden's point of view.  
15 And I know that many, many people have those concerns.

16 I'm surprised. I don't really feel that the  
17 Department is that weak or that bad, or that the wardens are  
18 that up in arms. That would really be news to me, and I really  
19 don't believe it's correct.

20 I think that there was a lot of conversation critical  
21 of Boyd Gibbons, the last Director. I think that was very  
22 unfortunate. I don't think it was right. I think he was a  
23 tremendous visionary, a very able guy.

24 CHAIRMAN LOCKYER: Why is he gone?

25 MR. THIERIOT: Well, I think, you know, there are a  
26 lot of issues on which the Governor's Office felt that he could  
27 have acted differently. And I'm sure on many of those issues,  
28 probably they were right, because I think the Governor's quite



1 an able person, and I think he's actually more able and has done  
2 more in the environmental area than he is given credit for.

3 So, I think they're both able people. I think it's  
4 just been unfortunate that Boyd Gibbons hasn't continued,  
5 because I think he's been a good fellow.

6 CHAIRMAN LOCKYER: Was there any particular criticism  
7 of him that comes to mind?

8 MR. THIERIOT: Well, it's truly dependent on your  
9 point of view on whose ox was getting gored.

10 CHAIRMAN LOCKYER: Okay.

11 MR. THIERIOT: The environmentalists felt he wasn't  
12 supporting the environment enough. The hunters felt, like the  
13 bear and hound hunters, an infamous situation --

14 CHAIRMAN LOCKYER: Yes, I remember that.

15 MR. THIERIOT: -- felt he wasn't aggressive enough in  
16 support of hunters.

17 The private property side of the issue, developers,  
18 farmers, and so forth, felt he wasn't protective enough of their  
19 interests.

20 CHAIRMAN LOCKYER: What was a specific criticism in  
21 that area, private property?

22 MR. THIERIOT: If I could just finish the thought.

23 CHAIRMAN LOCKYER: Sure.

24 MR. THIERIOT: What I feel happens, and you all know  
25 it better than I, often in government the Fish and Game  
26 Department is truly a microcosm of, and that is, you have  
27 obviously these different special interest for whom their own  
28 interests far outweigh the broader common interests.

1           And what happens in a case like that is, people end  
2 up seeing the trees for the forest, and environmental groups,  
3 for example, may say, well, gee, he let us down on points one,  
4 two and three. And that's stayed in their craw, and they  
5 remember that, and they overlook the fact that he was their  
6 defender on points four through fifteen. And that just seems to  
7 happen a lot.

8           Boyd Gibbons's predecessor, a man named Pete  
9 Bontadelli, also took a lot of heat in that position. Again, I  
10 think he was a good and an able man. And he did a lot of good;  
11 particularly, where he did a lot of good was, he was very  
12 aggressive in using whatever funds he was able to come up with  
13 to buy and protect key land for the state. And he did more of  
14 that than any of his predecessors.

15           And I think this whole issue of wildlife and  
16 environment in many ways comes down to that issue: how much  
17 land can be protected in some fashion, easements being purchased  
18 by the state, being purchased by the Nature Conservancy. And I  
19 think under Bontadelli, the state probably led all other states  
20 in the country for being proactively that way, which I think is  
21 very important.

22           Boyd Gibbons's strength was, he was a tremendous  
23 visionary. He was -- he looked out and was able to see all  
24 sides of the picture. He wrote a book called Why Island, and it  
25 was a book about an island, I forget where in the east, but that  
26 again was a microcosm of all these problems: that developers  
27 wanted to move there; environmentalists wanted to protect it;  
28 hunters and fishermen wanted to use it. And all these forces



1 came crashing together when real estate values reached a certain  
2 point. And he wrote this book; it was a short book, but it was  
3 really an interesting book. And by the end of that, you didn't  
4 know whose side he was on.

5 And one rarely sees that, and I feel that's a key  
6 element for somebody in Boyd's position. You're always trying  
7 to advance the ball in terms of what is known and what is true.

8 CHAIRMAN LOCKYER: What's been the most difficult  
9 issue that you've had while you were a Commissioner?

10 MR. THIERIOT: Probably Endangered Species  
11 Act-related legislation.

12 CHAIRMAN LOCKYER: The listing?

13 MR. THIERIOT: The listing type things. And that's  
14 an important area, and an area I know that Senator Hayden is  
15 interested in, and rightly so.

16 And an issue as you all know at least as well,  
17 probably better than I, it really is coming to a fore in this  
18 Gnat Catcher area in the southern counties. And I think that  
19 the issue may be simpler than it seems, in that especially with  
20 the growth of population in the state, I think the will of the  
21 majority is to protect the natural resources, to protect what  
22 wildness is left in California. And the Endangered Species Act  
23 is the first thing that's had the teeth to really do that.

24 At the same time, after a couple of decades of the  
25 Endangered Species Act being used as a hammer to achieve these  
26 ends, now the will of the majority has shifted a little bit, I  
27 think. Now the will of the majority is saying, "Well, our  
28 wildness is starting to be protected, but we feel this hammer

1 falls unfairly." This is my reading; this is my sense. That  
2 wildland that needs to be protected, must be protected, but when  
3 it comes to taking away people's private property, there should  
4 be some form of compensation.

5 This in itself has become a controversial issue, as  
6 you all know, daily in the newspapers these days. And I think  
7 there are lots of great complexities about how a compensation  
8 concept would be carried out.

9 And I don't feel I know the fine points that well,  
10 but to me, it's not all that different from eminent domain used  
11 when they want to put a highway through your property. If they  
12 need it, if it's in the public good, then it's got to be done.  
13 But if they take away, you know, take away something of value,  
14 then -- of substantial value for the public good, then I think  
15 the public has to make the private sector whole.

16 Anyway, my thought is that I would hope that both  
17 sides are moving towards that a little bit, the private property  
18 side, the environmental side, because if something could be  
19 worked out that way, it would get past all this tremendously  
20 gridlocking difficulty that we're facing now over the use of the  
21 Endangered Species Act, which, after all, has -- has angered so  
22 many people now, and so people have felt it's unfair, that you  
23 see happening at the federal level what is happening, wherein a  
24 number of Representatives and Senators are now looking for  
25 legislation that many would feel is going too far the other way.  
26 It's creating a backlash.

27 I really think this is a key area where there's got  
28 to be a bridge found and built between the competing interests.

1 CHAIRMAN LOCKYER: Senator Lewis.

2 SENATOR LEWIS: You brought up the Gnat Catcher.

3 Did you vote to list it? Is that what I heard you  
4 say?

5 MR. THIERIOT: That wasn't the issue this time. The  
6 issue was, over how many months -- how many months does the  
7 Department have to come up with a recommendation to either put  
8 it on the list for study, not for listing but for study. How  
9 many months do they have. And the issue was, is it a six-month  
10 process or a three-month process.

11 The reason that's at issue is, there are so many  
12 competing concerns down there relative to that, that many people  
13 feel that it has to be -- it should be put off and not addressed  
14 quite so quickly.

15 The problem is that the way the law reads is, there  
16 isn't that much flexibility in the timing that one has to list.

17 SENATOR LEWIS: What was the other one you mentioned?  
18 Was it some sort of salamander? What was the deal on that?

19 MR. THIERIOT: That was taking it up for study as to  
20 whether or not it should listed.

21 And when it first came up, I was brand-new on the  
22 Commission, and I hadn't been exposed to these things up close  
23 that much before. And at the first hearing it came up, I felt  
24 that the environmentalists had not made a sufficient case to  
25 call for listing, the plaintiffs or whatever they're called.  
26 And had sort of argued against considering it for listing.

27 After that meeting, though, I spent a lot of time  
28 trying to educate myself, less as to the biology which I would



1 never learn about, but at least as to the law. And I felt that  
2 left less room for flexibility than I had thought was there.

3 SENATOR LEWIS: What was the name of this salamander?

4 MR. THIERIOT: Southern Seap Salamander.

5 SENATOR LEWIS: And where does this lovely critter  
6 live?

7 MR. THIERIOT: North part of the state.

8 SENATOR LEWIS: So the Southern was in the Northern.  
9 How many different salamanders are there in  
10 California?

11 MR. THIERIOT: Questions like that I really don't  
12 know, Senator.

13 SENATOR LEWIS: God bless them.

14 CHAIRMAN LOCKYER: One is the Speaker of the House.

15 [Laughter.]

16 CHAIRMAN LOCKYER: Senator Petris.

17 SENATOR PETRIS: I'm looking at the names of the  
18 other members, but the list doesn't give their occupations.

19 Are there any biologists, or marine biologists, or  
20 other scientists on there, appointed members?

21 MR. THIERIOT: No, I don't think there are any  
22 biologists per se. There is a Frank Boren, who is head of the  
23 Nature Conservancy. There's a Gus Owen who's a businessman.  
24 There is a fellow named McGeoghegan who is a farmer.

25 CHAIRMAN LOCKYER: And a vacancy.

26 MR. THIERIOT: And we have a vacancy.

27 SENATOR PETRIS: Well, the reason for the question  
28 is, some of the objections we've had in the mail said where's

1 your scientists? You used to have scientists; now you don't  
2 have any. I thought we still did.

3 A hunter can't possibly be concerned for carrying out  
4 the protection part of the mission. It's a very delicate  
5 balance. You have a conflicting mission there. One is to  
6 supporting hunting, and the other is to support the animals.  
7 It's kind of a broad, over simplification, but I imagine at  
8 times it's a little difficult to reach a balance there.

9 MR. THIERIOT: I don't think that's ever been  
10 difficult, Senator.

11 I think that the opposition comes from different  
12 point of view. Just quickly, my sense is -- others could  
13 disagree, I'm sure -- but that the hunting community has  
14 educated itself tremendously over the last couple of decades.  
15 And it realizes that in order for what it loves to do to  
16 continue, it has to, more aggressive than anyone else, protect  
17 the species. And so, that's why there's been so much money put  
18 into things like Ducks Unlimited, and so forth.

19 So in terms of protecting species, I do think hunters  
20 and fishermen are more avid protectors of species than  
21 nonhunters.

22 I think where the concern comes from, where the  
23 letters of opposition to me have come from, are more animal  
24 rights groups than environmental groups.

25 SENATOR PETRIS: They don't want any hunting at all.

26 MR. THIERIOT: And they don't like hunting. And I  
27 can understand that.

28 I do think -- and I think some of them will probably



1 speak today.

2 At the Commission meetings that I've been present so  
3 far, there has been one or two people who have spoken from an  
4 animal rights point of view. And the issues they bring up are  
5 issues that I'm completely in agreement with and so would most  
6 Commissioners be. They're usually not hunting issues. They're  
7 issues along the line of, for example, there's a fallow deer  
8 industry. You can grow deer and then sell the meat.

9 Well, the animal rights groups are interested in  
10 those deer being cared for as properly as possible while they  
11 are held and raised. And then, when they are killed, that they  
12 be killed in the most humane possible ways.

13 Things like that, I think all the Commissioners would  
14 be supportive of.

15 SENATOR PETRIS: They do that for veal, small sheep.  
16 You know, the veal issue was very big here a few years ago. I  
17 think there's general support for that.

18 Thank you.

19 MR. THIERIOT: Thank you.

20 CHAIRMAN LOCKYER: I'd point out also that if the  
21 desirable balance is between hunters and those sensitive to  
22 issues of habitat protection, you've basically put your money  
23 where your mouth is with respect to habitat protection by the  
24 conveyance of that huge acreage to the Conservancy. And that,  
25 perhaps, speaks more profoundly than the normal rhetoric or  
26 comment we get.

27 I compliment you for your far-sightedness.

28 MR. THIERIOT: Thank you.

1 CHAIRMAN LOCKYER: You complimented Mr. Gibbons for  
2 being a visionary. I think you and your family have been as  
3 well.

4 I'm sure there is testimony. If there's anyone who  
5 wishes to comment, first in support?

6 MR. JOHNSON: Mr. Chairman and Members, my name is  
7 Huey Johnson.

8 CHAIRMAN LOCKYER: It looks like you have your duck  
9 tie on today?

10 MR. JOHNSON: These are peace symbols, cranes. And I  
11 would mention the crane, I suppose, is a international peace.  
12 The birds fly from one nation to another, and whether from the  
13 Soviet Union in those years, to India where they struggled for  
14 years to save themselves, and we also have them in California.

15 I was formerly here as the Resource Secretary, and  
16 have gone through this process and think it is a very healthy  
17 and important one. And I commend you for doing it well.

18 In this case, cranes became a symbol for me while I  
19 was living here because we have 30 miles in Sacramento at  
20 winter, really had no place to winter because their landscape  
21 had been used for other purposes. And a group of us -- I once  
22 worked for the Nature Conservancy a number of years ago -- we  
23 decided it would be worth trying to provide a permanent place  
24 for them, because in summer, they go to Alaska and Siberia to  
25 nest. And I approached several people, including Richard  
26 Thieriot and said, gee, can you give us some help.

27 It was his way of describing the group, that area  
28 that is now the Nature Conservancy preserve, some 3,000 acres

1 down there that provides as permanent heritage wintering place  
2 for these birds that, hopefully, our great-grandchildren will  
3 come and enjoy.

4 I speak as a President of the Aldo Leopold Society.  
5 Leopold is a contemporary of Thoreau. His famous book is Sand  
6 County Almanac, and he spoke of the importance of -- he was a  
7 first ecologist. He was a professor, first one of wildlife  
8 biology in the United States at the University of Wisconsin.  
9 And he rather invented the word and put it in practical,  
10 meaningful terms, and suggested the importance of managing  
11 things land how we should do it.

12 He was a very poetic person, very sensitive. He's  
13 easily the number one hero of America's environmentalists today,  
14 including preservationists. He was a hunter, and he was a  
15 fisherman, and he was a very, very sensitive person in doing  
16 that.

17 And he fully thought out his actions, and he fully  
18 worked very hard as a habitat preservationist and as a  
19 scientist. And the popularity of the man long after his death  
20 seems to increase each year. His books increase in sales;  
21 they're now very prominent internationally.

22 I asked again, Mr. Thieriot, if he -- as we sat in a  
23 duck blind on several occasions, talking about things that were  
24 environmental -- if he would consider helping start an Aldo  
25 Leopold Society for the purpose of furthering the ideas and  
26 works of that gentleman. And he generously did so, and we've  
27 got some other people, and that society is progressing.

28 And it would take a middle-of-the-road position that



1 would not buy the idea that we should oppose all hunting. We  
2 believe it would be nice to have the opportunity to be in  
3 nature, be a choice of future generations and permanence. It  
4 may include hunting. I spend more time as a preservationist  
5 than I do hunting, but I do hunt, and I do fish, and I do bird  
6 watch, and I do a lot of other things.

7 But in any event, that society, I believe, will go  
8 on, and I can thank him and others like him who are sensitive,  
9 middle-of-the-road folk, who are able to work with, I think,  
10 preservationists.

11 The idea of animal suffering isn't something I like,  
12 et cetera, nor do I like the idea that there should be no rules,  
13 and we hunt things from pickup trucks, and what have you.

14 So, ours would be an attempt to be a poetic  
15 middle-of-the-road position, and he was generous in lending his  
16 name and financial support in starting the idea.

17 So, I think he will make an excellent Commissioner if  
18 you choose to appoint him.

19 CHAIRMAN LOCKYER: Thank you.

20 Other comments?

21 MR. JOHNSON: May I say one more thing? I promised  
22 Senator Hayden I would do one thing.

23 I agree somewhat with him, that the critical issue of  
24 managing the integrity of the environment of California hinges  
25 to a great extent with the Fish and Game Department. And I feel  
26 pressures are on, and it's awfully important that you practice  
27 oversight, and I know you will. But we all watch and hope from  
28 outside.

1           Thank you.

2           MR. SIKES: Mr. Chairman, Senators, my name is Walt  
3 Sikes. I'm the Executive Director of the California Waterfowl  
4 Association.

5           I'll tell you a little bit about our organization.  
6 Our mission is the protection and enhancement of California's  
7 waterfowl and wetlands. We've been in existence for 50 years  
8 now, and consist of 11,000 active members throughout California.

9           I've known Mr. Thieriot for several years, and he's  
10 been a strong supporter of our organization for many of those  
11 years that I have known him. He has given both financially and  
12 with his own time to many of our programs.

13           He is one of the key founders of our local breeding  
14 waterfowl program, designed to return local waterfowl  
15 populations to its historic levels.

16           Mr. Thieriot, on his own, has also brought together  
17 several government and private organizations to improve wildlife  
18 areas in the Central Valley. I think that Mr. Thieriot  
19 epitomizes the word "steward of the land."

20           I have worked with Mr. Thieriot as acting  
21 Commissioner since his appointment last year and found him to be  
22 enthusiastic, knowledgeable, and dedicated to doing what was  
23 right, not only for outdoor enthusiasts, but also for our  
24 wildlife resources.

25           Our organization strongly supports Mr. Thieriot's  
26 appointment, and I urge this Committee recommend confirmation of  
27 his appointment as Fish and Game Commissioner.

28           Thank you.



1 CHAIRMAN LOCKYER: Thank you, sir.

2 Other comments?

3 MS. HANDLEY: I'm Virginia Handley with the Fund for  
4 Animals.

5 I think I'm probably one of the few people in the  
6 state that actually go to the Fish and Game Commission meetings.  
7 I'm kind of a camp follower. It's my one way for a  
8 mini-vacation in my job.

9 I just came from their hearing in Ukiah in which they  
10 announced there is an upcoming hearing on the Gnat Catcher. So,  
11 that issue certainly has not been resolved.

12 I was very disturbed by the information that Senator  
13 Hayden gave; these 193 violations is very disconcerting. And  
14 the fact that Mr. Thieriot is a hunter, maybe a duck hunter  
15 particularly, does that bring about a conflict of interest?

16 He mentioned all the associations that he's a member  
17 of. He did not mention Ducks Unlimited. I would say the ducks  
18 that are unlimited are the ones in his freezer.

19 We're disturbed, too, by Boyd Gibbons being gone,  
20 too. I might also add that Vern Garren is also gone, who was  
21 the lobbyist who also really was a bridge between different  
22 factions. We're very sorry to see him go.

23 CHAIRMAN LOCKYER: And the Leg. Counsel from the  
24 Attorney General's Office has been replaced, so there's been a  
25 purge in that place that's best compared to something that  
26 happened in Eastern Europe 30 years ago.

27 MS. HANDLEY: We are, of course, in support of all of  
28 Mr. Thieriot's work with the wetlands. Of course now, being a

1 duck hunter, he has a certain interest in all of those ducks.

2 People like to give the impression that the animals  
3 rights, that we're a little far out in being concerned about the  
4 individual animals. While in fact, the Commission is prescribed  
5 by law that they are to consider the welfare of individual  
6 animals. This was put in when Charley Fullerton was the  
7 Director, and I helped to put that in because we were concerned  
8 at the time that the Commission was giving a permit to a  
9 gentleman to cut off the antlers of elk in velvet, which was  
10 very painful. And they said at the time, well, we don't have  
11 any requirement to consider individual animal welfare.

12 So, they did put that in there then. And this has  
13 shown up in the environmental impact statements, where they do  
14 have excellent chapters where they really explore the welfare of  
15 individual animals, that animal's ability to feel pain, and that  
16 pain includes stress.

17 The different wounding --

18 CHAIRMAN LOCKYER: Have you seen actions of  
19 Mr. Thieriot as a Commissioner that worry you?

20 MS. HANDLEY: There's only one instance when we talk  
21 about the welfare of individual animals, and we brought up the  
22 subject of deer farming.

23 The Department actually asked the Commission to not  
24 have any deer farming, and the Commission decided that they did  
25 want to have some deer farming of fallow deer.

26 I don't recall whether you were on the Commission at  
27 the time that they did vote to have deer farming in California.  
28 That was something we were not in agreement with right there.

1 But Mr. Thieriot gave a disturbing sentence of saying  
2 that he thinks that the wildlife in captivity should go to the  
3 Department of Food and Ag., and that is something which we are  
4 very much opposed to. We think the Department is opposed to,  
5 too, and we're fighting legislation this year to put deer farms  
6 into the Department of Agriculture. We think they should remain  
7 with the Department of Fish and Game, and that Fish and Game  
8 really feels a lot more responsibility, is a lot more dedicated  
9 to that.

10 There being really so few meetings of which he's had  
11 to vote on the Endangered Species things, I couldn't comment on  
12 that.

13 The hunting regulations for this year have not yet  
14 been voted on. I think that'll be in Alturas. I can't say now  
15 that -- one is to consider the welfare of individual animals, I  
16 don't know how that allows him to vote for clubbing animals to  
17 death in traps; having them ripped apart by dogs, or being  
18 wounded with bows and arrows.

19 They do put some excellent observations in the  
20 environmental impact statement. The problem is, they don't seem  
21 to really seriously consider them. We hope that Mr. Thieriot  
22 will.

23 That vote has not yet come up.

24 Thank you.

25 CHAIRMAN LOCKYER: Thank you.

26 Additional comment?

27 All right, questions from Members of the Committee?  
28 Are you prepared to act on this matter?



1           SENATOR BEVERLY: I'm prepared to make a motion.  
2 Move we recommend confirmation.

3           CHAIRMAN LOCKYER: All right, we have a motion by  
4 Senator Beverly.

5           Any discussion? Let's call the roll.

6           SECRETARY WEBB: Senator Ayala.

7           SENATOR AYALA: Aye.

8           SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator  
9 Petris.

10          SENATOR PETRIS: Aye.

11          SECRETARY WEBB: Petris Aye. Senator Beverly.

12          SENATOR BEVERLY: Aye.

13          SECRETARY WEBB: Beverly Aye. Senator Lockyer.

14          CHAIRMAN LOCKYER: Aye.

15          SECRETARY WEBB: Lockyer Aye. Four to zero.

16          CHAIRMAN LOCKYER: We'll hold the roll open so other  
17 Members may record.

18                       [Thereupon the final vote for  
19 confirmation was 5-0, as Senators  
20 Ayala's and Lewis's aye votes were  
21 added pursuant to Senate Rule 28.7]

22          CHAIRMAN LOCKYER: Good luck. We wish you well.

23          We will try to understand more clearly this business  
24 about the Butte County District Attorney. Be aware, it's a  
25 broke county. They're very broke, so they may be trying to  
26 balance the budget.

27          But your sensitivity to all the various complex tasks  
28 before the Commission is, I think, apparent, and your

1 thoughtfulness in trying to bridge the various points of view is  
2 very infectious. Good luck.

3 MR. THIERIOT: Thank you very much, Senators.

4 [Thereupon this portion of the  
5 Senate Rules Committee hearing  
6 was terminated at approximately  
7 5:45 P.M.]

8 --oo0oo--  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28




CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13<sup>th</sup> day of March, 1995.

  
EVELYN J. MIZAK  
Shorthand Reporter



**273-R**

Additional copies of this publication may be purchased for \$6.25 per copy  
**plus 7.75% California sales tax.**

Senate Publications  
1020 N Street, Room B-53  
Sacramento, CA 95814  
(916) 327-2155

Make checks payable to SENATE RULES COMMITTEE.  
**Please include Stock Number 273-R when ordering.**

